

1894-044 Chancery Causes: George D. Hale & Co] vs. C. F. T. Carter & Lee Co.

Hale, Jarvis, Moore, Wygal, Orr, Albert, Ewing, Muncy,
Munsey, Stillman, Gillenwaters, Armstrong, Brown, Bledsoe

CA - Debt
T - Property
Business

- Correspondence

Additional Information:
Hardware business

To Honorable H.S.K. Morison, Judge of the Circuit Court of Lee county:
Humbly complaining your orators, Geo. D. Hale and H.C. Jarvis, who did business under the firm name and style of Geo. D. Hale & Co., would respectfully represent unto your Honor that for some time they under their firm name did a hardware business and that while so engaged, on the

day of 189 , they sold to C.F.T. Carter and Jas.M. Moore one plaining machine for which the said Moore and Carter executed to your orators three promosory notes due respectively
and aggregating \$70.50, ^{here filed marked "K" as per herof} all of which notes were duly delivered to your orators in payment for the said plainer. Your orators would further represent unto your Honor that they delivered the said plainer to the said Carter and Moore, who removed the same to the latter's place of business. Your orators represent that the said machine needed some repairs, which need was fully known to the said purchasers: and your orators aver that by reason of this small deficiency they sold the said machine at a reduced price, to wit: \$70.50, and they represent and aver that they were in no way to furnish any repairs, or, in fact, to do any thing more than to furnish the machine as it at the time of the said trade was, - all of which on the part of your orators they aver that they did and performed, and that so far as they observed or learned to the full satisfaction of their said customers.

Your orators further represent that some time after these notes became due, they each being wholly unpaid, they had a warrant issued by one of the Justices of Lee county against the said Carter and Moore in order to enforce the collection of the same. After the required notice, and on the day set, the said Carter and Moore in person and by attorney and your orators by attorney, appeared before John B. Wygal, a Justice of Lee county, which Justice proceed to hear the case, - all of which will more fully appear by an inspection of the warrant herewith filed marked "A". And your orators further represent unto your Honor that upon the calling of the said case before the said Justice, the defendants, the said Carter and Moore, by their counsel, offered a plea of offset to the amount of \$200. 00, asking for a judgment over. This plea was verbal only as your orators are informed it could be. And your orators represent that the said plea set out that this said amunt was due them by ~~reason~~ by reason of damages which the said plea alleged had accrued

by reason of the said Carter and Moore failing to build certain houses which they had under contract at the time of the purchasing of the said plainer: and the ^{pl} ~~pl~~ ^{al} ~~al~~ alleged that this failure was the result of the failure on the part of your orators to furnish the repairs which said plainer need^d to do good work. Your orators allege that to the filing of this plea and to the hearing of any proof thereunder they by their attorney objected, but the said Justice admitted said plea and heard evidence touching the same. To all of which then and there your orators objected because, as they are informed, the said court had not jurisdiction of any amount more than \$100.00. After all the evidence was in, the said Justice gave judgment in the following words and figures, to wit:

"Geo. D. Hale & Co.	On the 21st day of Oct., 1893.
vs.	(In debt.)
Jas. M. Moore and C. F. T. Carter.	At Jonesville in said county.
Judgment: That the defendant recover of the plaintiff \$100.00 with interest thereon from the 21st day of Oct., 1893, till paid, and \$3.00 for costs.	
John B. Wygal, J. P."	

Your orators aver that they by their attorney then and there informed the said trial Justice that from this judgment they wanted an appeal, as they are informed they had a right to do, to the county court of Lee county, and they informed the said Justice that they would furnish satisfactory security as is by law required with ten days, which time they are informed they had to give the said security and complete the said appeal. Your orators aver that immediately and before the ten days had expired the said John B. Wygal left the Commonwealth, and they are informed and believe, went to the World's Fair. They aver that they were ready and will^{ing} and seeking an opportunity to give the required bond several days ~~in~~ before the expiration of the ten days, but they were prevented from completing the appeal and giving the bond before the said trial Justice by reason of his absence from the Commonwealth. Your orators aver that on the last day of the ten days they made by their attorney diligent inquiry and search for the said John B. Wygal, and that he was not in the town of Jonesville where the judgment was rendered, nor could he be found in the county: and they further represent that acting upon the information which they believed to be correct that said Justice was yet out of the Commonwealth, and following the analogy of the law for the granting of new trials in cases where the Justice is out of the Commonwealth, as they were informed they could do, they

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they applied to H.C. Joslyn, an other Justice of the said county, for an appeal to the county court of said county, and offered S.V.F. Richmond as their surety: as will appear by the indorsement of the said Joslyn on the warrant herewith filed, he accepted the said Richmond, and certified the same to the county court.

Your orators further represent and aver that upon this certificate made by H.C. Joslyn, Justice, they had their case properly docketed in the county court, and that the said appeal come on in the said court for a hearing at the November term thereof, at which term and on the calling of the case, the defendants by their counsel moved the court to dismiss the said appeal because improperly granted, after considering which motion the court accordingly ^{a copy of the order from county court} did dismiss the same. Your orators aver that this action on the part of the county court was error, and an error which imposes upon them a very great hardship, and against which as they are informed they have no remedy save in your Honor's court of equity.

Your orators aver that the judgment rendered against them by the said Wygal is void ab initio, because, as they aver, the said justice assumed a jurisdiction which is not granted to Justices of the Peace in Virginia: they aver that the jurisdiction assumed by the said Wygal involved an amount of at least \$170.50.

Your orators further allege that the admission of the aforesaid plea on the day of trial, was unlooked for by them, they being informed and believing that the Justice's court would only consider question involving amounts of not more than \$100.00: and for this reason they allege that they were surprised by the width and extent of the issue thus opened up, which was done, as your orators aver, without negligence or fraud on their part: and they further allege that by reason of this admission of the part of the Justice they could not make the defence and proof which they assert they could have made and can make, which, they are advised, will entirely change the attitude of the case, and entitle them to judgment in their favor.

Now in so much as your orators are remedyless save in your Honor's court of equity, their prayer therefore is, that C.F.T. Carter and James M. Moore and John B. Wygal, Justice, be made parties defendant to this

"B"
herewith filed marked "B"

24
bill, and that they be required to answer the same but not upon oath,
that being waived, and that an injunction be awarded against each of
them, enjoining said Moore and Carter, either in person or by attorney,
from collecting the judgment awarded against your orators on the 21st
day of October, 1893, by the said John B. Wygal, and enjoining the said
Wygal, or any other justice, from issuing an execution on the said
judgment against your orators, or any one of them. And if mistaken in
their special prayer, your orators ask for such other and further re-
lief to which they may be entitled. And they will ever pray, &c.

E. W. R. Ewing,

Counsel.

Virginia,

Lee county, to wit:

This day E. W. R. Ewing, agent and attorney for Geo. D. Hale and H. C.
Jarvis, personally appeared before me, S. V. F. Richmond, Clerk Co. court said
county, and made oath that of his own knowledge he is conversant with
most of the facts stated in the above bill, and that so far as his
own knowledge extends they are True, and that so far as he can learn ~~from~~
from others he believes every fact stated in this bill to be true.

Given under my hand this the 19th day of December, 1893.

S. V. F. Richmond Clerk.

1894 2^d Feby Rules
Bill filed Spa
Exd. Pleas Abs
" 1892 in abatement
ent. filed &
" 1894 in abatement
Cause set for
hearing by
Juffs

-13. } Bill.

Le. F. J. Carter, et al.

Instructions granted
pursuant to the prayer
of the bill in respect
the depts. C. H. T. Coster &
James M. Moor their
agents or attorneys
have further proceeded
upon the judgment in
the bill of proceedings
mentioned until the
further order of the
court. But this order
will only be come operative
upon the plaintiff's answer
and for the purpose of creating
before the clerk of this
court a bond in the penalty
of \$300.⁰⁰ conditioned to
pay all cost & damages
incurred by this instruction
as well as the law directs
to the clerk of the
Circuit court of
the District of Columbia
of the County of
Washington
D.C.
Jug 10th 1894

1894 1st Feby Rules Bill
filed Spa Ex Dand
Plea No 1 in abate
ment filed
2 Feby Rules 2nd Spa Ex
and Plea No 2 in abatement
filed
15th march Rules taken the last
Monday in Feby and cause
set for hearing.

Costs & some Defendants
at Mich Term 1894.

Clerk's fee 2.85
 Atty. 15.00
 Co. Clerk 25
 \$18.10

1894. March Term
Decece final
OVB 5-76

Plffs costs

C. 5.27

Depo.

Subst. Plea in abatement

Plffs Costs

C 8.61
N P 6.50
Shff 1.50
exits 1.50
J P 1.50
atty 5.00

\$24.61

Defts Costs

C \$1.25

Entry

Geo. D. Hole v. lcs.

vs. } Bill.

Co. F. J. Carter, et al.

1894 1st April Rules
Bill filed & pa
accepted, answer
of defts filed and
1st May Cause set for hearing
June 1 Decree & Court
Decree for amt of
notes subject to ex
of \$15⁰⁰ as of then date
1894 Nov Term Decree
final See Chy order
Book 4 Page 124.

\$ 25⁰⁰

ROGERSVILLE, TENN., July 22 1892

Ninety days after date, with interest from date, WE promise to pay to the order of GEO. D. HALE & COMPANY, the sum of

Twenty five

for Plaintiff that was referred from June 1st 1892. DOLLARS.

negotiable and payable at the Rogersville National Bank, and WE agree that if suit is brought on this Note to enforce payment thereof, to pay Ten per cent Attorney's fees on the amount due, the same to be taxed up in the judgment. Title of Plaintiff does not

pass from

is stated to

for M. Moore

Due

189

C. F. J. Carter

Address, Blacksburg Va

Geo. D. / Hale & Co

vs

James M. Moon & F. Y. Carter

Judgment that
defendants recover \$100⁰⁰
and \$3⁰⁰ costs. This
Oct. 21st 1893.

John B. Hygal J. P.

\$ 25-26

ROGERSVILLE, TENN., July 22 1892

Thirty days after date, with interest from date, we promise to pay to the order of GEO. D. HALE & COMPANY, the sum of

Twenty five for 1 Plane that referred from Louisa Court
DOLLARS;

negotiable and payable at the Rogersville National Bank, and we agree that if suit is brought on this Note to enforce payment thereof, to pay Ten per cent Attorney's fees on the amount due, the same to be taxed up in the judgment.

Geo D Hale & Co Title of Plane does not pass from
Geo M. Moore

Due

189

C. F. J. Carter

Address,

Geo. D. Hall & Co

vs

James M. Moore & C. F. T. Carter

Judgment - that the defendants
recover \$100⁰⁰ and \$3⁰⁰

Costs. This Oct. 2nd
1893.

John B. Nygal J. P.

\$ 20²⁶

ROGERSVILLE, TENN. *July 22* 1892

Six Months after date, with interest from date, *WT* promise to
pay to the order of GEO. D. HALE & COMPANY, the sum of

Twenty

for 1 Plane that was returned from your front
50 DOLLARS,
WT

negotiable and payable at the Rogersville National Bank, and *WT* agree that if suit is brought
on this Note to enforce payment thereof, to pay Ten per cent Attorney's Fees on the amount due,
the same to be taxed up in the judgment. *Bills of Lading are not for.*

From G D Hale & Co
Due _____ 189

for M. Moore
C F J Carter

Address, *Blackwater Va*

Thos. J. Hale & Co.

vs
James M. Moor
C. F. Carter

Judgment that the
defendants recover
of the ~~defendants~~
Plaintiff \$100.00 and
\$3.00 costs. This Oct
21st / 1893.

John B. Nygel Jr. R.

"N."

-N

Jonesville, Va.,

189

Virginia:

To the Hon. H. S. K. Morrison, Judge of the
Circuit Court of Lee County.

The separate demurrer and Answer of
John B. Wygab, Justice & C to a bill of In-
junction filed against this Respondent
et al by George D. Hale and H. C. Jarvis,
Merchants and partners, in business under
the firm name of "Geo. D. Hale & Co."

For demurrer to said bill, Respondent
says it is not-sufficient in law for
the following reasons: 1st-Your
respondent is not-a necessary or proper
party to complainants bill of Injunction,
in-as-much as no execution could
be legally issued, and the officer
issuing free from Contempt of Court,
on the Judgment in question after
Injunction granted enforcing said
Judgment, and, 2nd-For the reason
that Complainants had their remedy at
Law— In Exhibit "W. A. O."

But; should any further answer be
necessary, answering says, It is true
that he tried the warrant mentioned in com-
plainants bill of George D. Hale & Co vs
C. F. J. Carter and James M. Moore; that
he tried it on the 21st-day of October,
1893; that he gave Judgment against

George D. Hale Vles in favor of C. F. I. Carter and J. M. Moore for the sum of \$100⁰⁰, and for \$3⁰⁰ costs; that on that day the attorney for George D. Hale Vles stated that he would appeal or that he wanted an appeal, but he did not offer any bond and security, and for that reason he never granted any appeal.

Respondent further states that it is true that he went to the World's Fair between the said 2nd day of October, 1893, and the 3rd day of October, 1893, the last named day being the day when an appeal was granted in said case by H. C. Joslyn, another Justice of Lin Co. Va. — But respondent says it is not true that he was out of his County and away from his home and usual place of business on the said 3rd day of October, 1893, ^{if he was at home from 12 o'clock in the night of the day} the day that said appeal was granted by said other Justice, and respondent avers that he could have been found at his home in said County on said 3rd day of October, 1893.

Your respondent further answering says that it is true that the defendants in said Warrant pleaded or rather filed their Cross action in the nature of a plea of Set-Off for \$100⁰⁰, but said defendants never put in any such plea for \$200⁰⁰ nor for \$170⁵⁰ as is charged in the plaintiffs' bill. Said defendants also plead failure of consideration as to said three notes amounting to \$70⁵⁰, and proved to the satisfaction of this court that said notes were procured by misrepresentation and fraud and that the consideration had failed. It is true that the plaintiffs sued the defendants for \$70⁵⁰, and it is likewise true that the defendants sued the plaintiffs for \$100⁰⁰ in the manner stated, and the respondent avers that they ~~are~~ ^{should be treated as} ~~and were~~ separate actions, ^{which he did,} and that he had Jurisdiction. Having fully answered respondent begs to be hence dismissed with his costs, and as in duty bound he will ever pray.

(over)

Wm. A. Orr, Atty
for Respondent

Geo. B. Wygal, Justice &c
Ans.

Geo. D. Hale & Co
Filed at 1st April Rule 1894
A B Munsy
Clerk

Withdrawn
as to Wygal, the
Bill for
completing

Wm A. Orr, Atty.

Sworn to before me this the 17th day of February
1894
A B Munsy circuit clerk

That plaintiffs' appeal to the County Court was disallowed without trial and jury. Their failure to appeal to the Circuit Court which was their remedy in law and equity. In Ex parte "D. O." & Barlow's Law Practice instead of coming into this Court of Chancery. In Ex parte "D. O." & Barlow's Law Practice 1st Vol. 4 page 38 & page 39.

Virginia:

To the Hon. H. L. R. Morrison, Judge of the Circuit Court of Lee County:

The answer of C. F. I. Carter and James M. Moore to a bill of injunction filed against these respondents et al by George D. Hale Esq.

But Respondents answering say, That it is not true that at the trial of the warrant described in Complainants' bill that they either offered a plea of set-off for the sum of \$200⁰⁰ or for \$190⁵⁰; that they did at said trial plead fraud and failure of Consideration as to said three notes, which amount to \$70⁵⁰ and that they did also offer a plea of set-off for damages sustained by them on account of the Complainants' failure to comply with the said firms undertaking and warranty. X

Respondents further answering say, that it is not true that Jonsville is the usual place of business of John Wygal, Justice &c, and that he was absent from his place of business and from his County, and State on the day that the Appeal was granted by F. L. Joslyn, J. P. that it is true that he was at his home on said day in his County, (Lee) which is his usual place of business.

Respondents say that Complain-

1 auto sold to them a Palaming Machine
2 for which they executed notes amounting
3 to \$70⁵⁰; that certain parts were
4 needed and lacking, which parts
5 were to be paid for and delivered
6 to respondents at their place of
7 business in Lee County, Va on
8 Black Water; that said Com-
9 complainants never did pay for or
10 deliver said parts of said Machine
11 as they promised and agreed to do;
12 that Complainants warranted that
13 portion of said Machine delivered
14 to respondents to be as good as new-
15 well knowing that respondents were not
16 judges of such Machinery, and they
17 were not; and well knowing that
18 it had been used for a long
19 while and that it was worn out
20 and worthless.

21 Your respondents now state that they
22 have never been able to use said Machine
23 that it is altogether worthless as they
24 soon discovered and learned; that
25 they in due time gave the Complain-
26 ant notice that the same was subject
27 to their order.

28 Your respondents further state and
29 aver that they have been damaged at least
30 one hundred and fifty dollars by
31 reason of Complainants failure to
32 comply with the Contract and to make

* But in no event can the plaintiffs recover the \$70.50 against these respondents for the reason that no decree is prayed or asked therefor in said bill.

1 good the warranty of said machine;
2 that respondents proved at and upon
3 the trial before the said J. B. Wiggall,
4 J. P. that they were damaged at least
5 \$150.00 but respondents only asked
6 a judgment for One hundred
7 dollars, that being all they asked
8 for in their plea, but they now ask
9 for a decree for all they prove.
10 * Now, respondents having answered the
11 bill as fully as they are advised it
12 is necessary for them to do, they beg to
13 be hence dismissed with their costs.
14 Wm A. Orr, Atty &c

15 Virginia:-
16 In the Clerk's Office of the Circuit Court of
17 Lee County:-
18 J. A. B. Munsey, Clerk of the Circuit Court
19 of Lee County, Virginia, do Certify that
20 H. F. Carter and J. M. Moore appeared before
21 me in my Office and made oath
22 that the foregoing Answer is true.
23 Given under my hand this the
24 21st day of February. 1894.
25 A. B. Munsey Clerk

W. F. I. Carter et al

vs. J. Munsey

Geo. D. Hale & Co.

Filed at 1st April Rules 1894
A. B. Munsey clk

Wm. A. Opp. Atty.

Virginia: In the Circuit Court of Lee County.

To the Hon. W. T. Miller, Judge of said Court—

The demurrer of L. F. Carter and James M. Moore to the bill of Complaint of George D. Hale & Co against these defendants et al exhibited in this Court—

These defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of Complaint, to be true in manner and form as herein set forth, do demur thereunto, and for Causes of demurrer shew—

That if the matter and things stated in said bill do give the plaintiffs any Cause of action or Complaint against these defendants, the same is liable and determinable at Law, and have been determined at Law by a Court of final Jurisdiction—

That this Court has no Jurisdiction of the Case the bill failing to show Equity on its face by Charging fraud in the procurement of the Judgment Complained of—

That the bill shows on its face that the Justice rendered a Judgment for \$100, a sum within his Jurisdiction, that the same was not interfered with by

3) 1 the County Court, which is in such cases
2 the Court of final Jurisdiction—

3 That the bill and exhibit "B" shows that
4 the County Court did not try the appeal;
5 that the remedy was then an appeal to
6 the Circuit Court, the County Court
7 having refused to try and give
8 judgment in the case—only dismissing
9 the appeal because not-granted by the trial
10 Justice—~~this being a Constitutional question~~

11 Wherefore, and for divers other
12 reasons and imperfections, appearing
13 in said bill, these defendants
14 demand the judgment of the Court,
15 whether they shall be Compelled to make
16 any further answer to said bill,
17 and pray to be hence dismissed with
18 their Costs.

19 Wm. Q. Orr, Atty.
20 for Defs.

C. F. J. Carter et al
vs J. Munsey

Pro. J. Hale & Co

Filed at 1st April Rules
1894 A. B. Munsey
Clerk

~~For~~ A. Orr Atty.

Geo.D.Hale & Company, Plaintiffs,

vs.

In Chancery.

C.F.T.Carter and Jas.M.Moore, Defendants.

This cause came on again this day to be heard upon the papers formerly read in the cause, the depositions of witnesses, and was argued by counsel. On consideration whereof it is ordered, adjudged and decreed that the injunction heretofore granted in this cause be and the same is hereby perpetuated; and it is further ordered, adjudged and decreed that the plaintiffs recover of the defendants the sum of \$70.50, with interest thereon from the 22nd day of July, 1892, until paid, and the costs of this suit, subject to a credit of \$15.00 as of the said 22nd day of July, 1892, for which recovery execution may issue. And nothing more appearing to be done, this cause is stricken from the docket.

Geo. D. Hale & Co.
vs, } Decree final.
C. F. J. Carter, et al.

Entered in vol by
C. B. Page 1894

Entered this.

179 JMK

Nov. 17th, 1894.

Geo.D.Hale & Co.

vs.

C.F.T.Carter,et al.

{ *See Schomberg,*

This cause came on again this day to be heard upon the papers formerly read in this case, and the motion of the defendants to quash the injunction bond filed by the complainants, and to dissolve the injunction heretofore granted in this cause, and the motion of the complainants for a continuance and the affidavit of E.W.R. Ewing filed therewith, and was argued by counsel: on consideration whereof it is ordered, adjudged and decreed that defendants motion to quash the injunction bond because it was given by Geo.D.Hale and H.C.Jarvis, individual members, and not by the firm Geo.D.Hale & Co., is over ruled; and it is further ordered, adjudged and decreed that the motion to dissolve said injunction be over ruled, and the complainants having shown good cause in the aforesaid affidavit, it is ordered that this cause be continued.

Geo. D. Hale & Co.

r. } Inter'y Decree

C. F. F. Carter, et al

Ent. & Chy. Ord. Book P. 32

Enter this.

M. J. M.

January 4, 1884.

George D. Hale & Co. Plffs
vs
C. F. Y. Carter et al Defs

This cause came on this day to be heard upon the bill and two pleas in abatement, one filed by C. F. Y. Carter and James M. Moore at first July Rules, 1894, and one filed by same defendants at 2nd July Rules, 1894; Upon consideration of which the Court sustains said pleas in abatement. It is therefore ordered and decreed that the ~~complaint be abated & the cause~~ ~~complaint be abated & the cause~~ ~~discontinued to plead & the defendants~~ ~~and that the defendants~~ ~~C. F. Y. Carter and James M. Moore~~ ~~pay their costs~~ ~~in this suit~~ ~~expended against the complainant~~ ~~and George D. Hale & Co.~~ ~~and~~ ~~the abatement~~ ~~stricken~~ ~~from the~~ ~~docket.~~

George D. Hale & Co
25 John Street

C. F. Carter et al
Entered Clay Book
Page 576
Mch 13th 94

Enter this claim
H. K. M.

3/13/94

Geo. D. Hale & H. D. Jarvis, Partners under the firm
name of Geo. D. Hale & Co. Plffs.

vs

In Chy

C. F. Horton and James M. Moore Dfts.

This cause came on to be heard this day
in vacation of the Circuit Court at Wise
Courthouse, Va, on the 25th day of April,
1894 ~~when~~ on the bill of plaintiffs with
demurrer thereto by defendants, and was
heard in vacation by written consent and
request of Wm. A. Orr Attorney for defendants
and E. H. R. Croving for complainants, and was
argued by counsel. On consideration whereof,
it is adjudged, ordered, and decreed that said de-
murrer be and the same is hereby overruled, and
leave is given the defendants to answer,
if they are so advised. The written consent
of Counsel ~~affairs~~ pursuant to which
this demurrer was passed on in vacation,
is hereby certified to the Clerk of the Circuit
Court.

To the Clerk of the }
Circuit Court of Va. }

W. T. Miller

George D Hale & Co
vs Vacation Deere
to F J Carter et al

Entered in Chyord
Book 3 P 693-4

1
The depositions of John B. Wiggab, Wm A. Orr,
J. F. Albert, C. F. T. Carter, James M. Moore, & others

taken before me, D. C. Lemell a Notary
Public in and for Lee County, Va
on the 11th day of May, 1894, at the
Office of Wm A. Orr in Jarrsville, Va,
pursuant to agreement, which dep-
ositions are to be read as evi-
dence on behalf of the defend-
ants in a certain suit in Chan-
cery now pending in the Circuit
Court of Lee County, Va wherein
George D. Hale & Co. are plaintiffs
and C. F. T. Carter et al are defend-
ants.

Present: Wm A. Orr, Atty for Defts
E. W. R. Ewing, Atty for Plffs.

John B. Wiggab a witness of lawful age
being first duly sworn deposes and
says:

195 What is your age, residence and
occupation?

I am 33 years, farmer - near
Jarrsville.

I Swear - Did you render this judgment her-
shoren you, as a Justice of Lee Co.,
Va, and filed with Complainant's
bill as exhibit "A"?

2)
Ans. I did -

Did or did not the defendants, G. F. Y. Barton and James M. Moore, offer a ~~plea~~ of Off-set on the trial before you, of said warrant, for a greater sum of money than \$100⁰⁰?

Ans. The defendant asked for judgment for \$100⁰⁰.

3 Ques. ~~You~~ did try said warrant & give judgment - did you?

This question is objectionable because the warrant shows for itself.

Ewing for pltif.

Ans. yes.

4 Ques. Was you or not at home on the 31st day of October, 1893, the date when H. C. Jaslyn, J. P. granted the appeal from your judgment to the County Court of this County.

Ans. I got home about 4 o'clock on that day & was there the balance of the day -

Questions by the plaintiffs.

Ques. Had you been out of the county and were you just returning on the day when you say he arrived about

3

11 O'clock?

Ans.

yes, I had been to the World's Fair at Chicago between the day of trial & day of return.

Ques.

Did you come through Jonesville on your return?

Ans.

No Sir.

Ques.

Where did you sit when you tried this case?

Ans.

In Jonesville.

Ques.

Up to the day of this trial had you not tried most of your cases in the town of Jonesville, Va.?

Ans.

Yes, Objected to because irrelevant & immaterial

Wm A. Orr, Atty

Ans.

Yes, the most of them.

Ques.

State whether or not the attorney who represented Geo. D. Hale & Co. in this case before you did not inform you on day on which you rendered this judgment, that an appeal was allowed to County Court & that the requisite security would be tendered before the expiration of ten days from that day?

Ans.

I remember that some talk about it

was had, but cannot say definitely what it was.

Ques.

State whether or not on the day of your leaving this county for Chicago, Ill., you did not tell Mitchell Spink, either in Jonesville or at Benton, that you would get off the train at Benton on your return, & did you not tell him that you would come over to Jonesville in his hack?

Objected to because irrelevant and immaterial.

Wm. C. Opp, Atty.

Ans.

I may have. I don't remember.

Ques.

The notes filed with the bill in this case marked "N" are the notes on which the warrant had been issued & the one which you speak of trying, were they not?

Ans.

I think they are.

Ques.

State whether or not C. F. T. Leoster & Jas. M. Moore, the defendants, denied executing & delivering the said notes to Geo. N. Hall & Co.?

Objected to because irrelevant and immaterial.

Ans.

I don't remember that they did.

Examined by Lepts Lakin Moore.
 Where do you keep your law books
 & official papers?

Ans.

At home.

How far do you live from
 Jonesville?

Ans.

About 5 miles.

Did you keep your books &
 papers at your home at the
 time and at the times spoken
 of by you in this deposition?

Ans.

Yes Sir.

Have you at any time had an
 office in Jonesville, if so
 whereabouts in Jonesville.

This question is objectionable
 because it is immaterial &c.

Erving.

Ans.

I have no office here, but

try cases here sometimes.

Have you ever fixed any point
 where you will only try cases,
 grant appeals, or allow new
 trials?

Ans.

No Sir.

And further this deponent swears
 not -

With claims
 1 day - 50. -

John B. Hygal

6 / Wm G. Orr another witness of lawful
age being first duly sworn deposes
and says: -

I am 44 yrs old & am
engaged in the practice of Law
& was the attorney of L. F. W. Leach
and James M. Moore at the time
the warrant was tried & judgment
rendered - filed by Complainants
with their bill marked "A." Then
said case was called by J. B. Lloyd
J. P. I as attorney for said defts
offered two pleas in writing -
One, in its nature a plea of fail-
ure of Consideration - the other in
its nature a plea of Off Ret -
To which pleas the attorney for
Complainants objected upon the
ground that his Clients had
therefore taken a deposition of
Geo. D. Hale one of said Com-
plainant firm which deposition
is here filed marked "W. A. O."

Then, I, withdrew said pleas
& filed the same pleas & facts
orally - for the reason that I
feared that the Justice would
get in a muddle on the sub-

ject of pleading.

After the Justice announced that he would enter judgment for the defendants against the Complainant firm for \$100 - & Costs, Mrs. E. W. R. Cwing stated that he wanted an appeal, & I stated to the Justice that it was his duty to grant an appeal if security was given within ten days.

I did not offer at said trial a plea of Off. ret. for a larger sum than \$100⁰⁰ for my said clients either in writing or orally.

I was by plaintiff.

If you offered no plea either orally or in writing of greater amount than \$100⁰⁰ and the Justice gave you a judgment for \$100⁰⁰ what disposition did said Justice make of the notes worried over?

I mean to say in the foregoing disposition that I offered no plea of Off. ret. covering a larger sum than \$100. I did plead that the consideration of said notes for \$70⁵⁰ had failed

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and the Justice decided that that
plea was sustained by the
evidence and gave me
a judgment for the amount
of the Off - set plea -

Ines. Then the plea put in by you
of failure of consideration &
offsets did amount to more
than \$100⁰⁰ did they not?

The sum of \$100⁰⁰ - & \$70⁵⁰
amount to more than \$100⁰⁰. But,
in a legal sense, I do not think
that I ~~plea~~ ^{plea} beyond the jurisdic-
tion of the Justice. I then be-
lieved and I now believe that
I had the right to prove that my
clients did not justify over the
\$70⁵⁰ on the ground of failure
of consideration, & that I had
a right to recover in a cross-
suit to the amount of \$100⁰⁰ -
This is my opinion of the law
on this subject - as I find it in
Pa

and further this deponent saith not.
Wm A. Ott.

J. F. Albert - another witness of lawful
age being first duly sworn deposes

9 and says:
What is your age, residence and
occupation?

Ans. - 38 years, Dan Post Office Lee Co., Va.
Am a farmer.

Said or not you and J. P. Albert- Con-
tract with L. F. Y. Carter and James
M. Moore to build two houses some
time in the year, 1892, and if
so how much were you to pay
for building them?

To this question we object, because
it is irrelevant, immaterial & has
nothing to do with the issue.

Ans. - Ewing,
We did contract for them to
build us two house - About
July 1892. We were to pay \$375⁰⁰
for both jobs, that is, to finish mine
which they had worked on the
fall before, & build J. P. Albert's
house for \$375⁰⁰.

Taking said price as a basis, I mean
the price of \$375⁰⁰, what difference
would you make between doing
said work by hand and doing
the same work with a planer
or planing machine?

This question is objectionable

10.
Ans -

for reasons above assigned.

I would think it could be done for 25 percent less with the machinery -

When you requested by S. F. Y. Carter and James M. Moore or either of them to enquire for repairs at Remington Lap, &c., a freight station, for a planing machine, & if so about what time, & how often did you enquire therefor.

Ans

I was so requested by Mr. Carter to call for something about his planer. I called as often twice.

Questions by plaintiff -

Ques. 1. Are you a practical house carpenter and are you accustomed to doing house building by machinery?

Ans - No Sir.

Ques. 2. Do you know, of your own knowledge, why it was that these men failed to build your house?

Ans - I don't know that I do.

Witness claims
1 day - 50

And further this deponent saith not - J. F. Albert -

{ J. P. Albert another witness summoned but not introduced claims 1 day attendance - 50¢ }

D. S. Swell N. P.

11/
The further taking of these depositions
is adjourned until May 12¹⁸⁹⁴ 9 o'clock
A.M. At same place.

D.C. Sewell N.P.

May 12¹⁸⁹⁴ 9 o'clock A.M.,
Met pursuant to adjournment
at same place same parties
present, namely W.A. Orr atty
for Defts & W.W. Ewing atty
for Plffs -

190 C.F. Carter, a witness of lawful age
being duly sworn deposes & says:-
I show you three letters filed in this
cause as part of the deposition of Vincent
L. Stillman taken by the Complainant firm -
One letter dated August 15th 1892 One
dated August 25th 1892 and One dated
Sept. 25 - 1892 - please state whether or
not these letters were written with
reference to the plaining machine
described in this cause as having
been bought by you from George
D. Hall & Co.

Ans.

Not at all.
Then what machine did you
want said repairs for?

Ans

For a Plainer we were talking
of buying from Mr Gillenwater
living near Rogersville, Tennessee

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said plainer he was offering to sell us for \$25⁰⁰ + the same kind of a machine we bought from Geo S. Hale & co. Both machines were purchased by L. M. Linsay from the party to whom these letters were written.

Who was present when you signed the three notes filed with Complainant's bill. & where were they signed?

Ans. - This question is objectionable as when & where the notes were signed is immaterial. Ewing.

Ans. - No one except Mr Moore, New Hall & myself & they were signed in his store office in the town of Rogersville Tenn.

State what they were given for and all you know about the contract

Ans. They were given for a plainer & the repairs it took to put it in running order.

Who was to furnish & pay for said repairs

Ans. - Mr Hall was to furnish them in fine & the price was included in the face of the notes. We told him we would not have it without he would get us the repairs.

13)

13c

He said he had bought the plainer from the company himself & that he knew how to get the repairs. He said that he already had them ordered according to a previous contract he had made with Mr. Moore.

Did you ever pay any thing on these notes.

Ans. No Sir.

Why not.

Ans. Because we did not consider that the contract we made with him had not been complied with & I didn't consider that we owed him anything.

Did you & Mr. Moore have a contract to build some houses for any one at the time you purchased said plainer from Geo. D. Hale & Co.

Ans. Yes sir, we had contracted to do some work for the Albert Bros, J. F. & J. P. Albert, to the amount of \$375⁰⁰

Did you fill your contract with them & if not why not.

Ans. We did not, we failed to get the use of the plainer.

Why is it that you never got the use of the planer

Ans.

We didn't get the repairs which Mr. Hale was to furnish us -

Ans.

Are you a practical house builder
yes sir. I have followed it
for 15 years.

Have you used lumber prepared
by such machinery as you got from
Geo. D. Hale & Co in the building of
houses

Ans

No sir, I don't think I have use
lumber prepared by such a
machine as that. I have used
lumber prepared by Machinery.
What is the reasonable difference between
house building by hand & by the aid
of such Machinery.

This question is objectionable as
it can have no bearing on this ^{case}, the
witness having shown his incom-
petency.

Ewing for Pl.

Ans.

I should think one third dif-
ference.

Have you ever used said Machine
bought from Geo. D. Hale & Co

Ans.

I have not.

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How much have you been damaged by the failure of George D. Hale & Co to comply with the contract as stated by you

Ans. I think we were damaged \$1000—

Questions by plaintiff.

Ques. You say you wanted the repairs which you ordered in the letters above mentioned for a plainer you were thinking of buying, had you made any trade, or were you sure you would trade?

Ans. We had not closed any trade, but we were sure we would trade so far as I was concerned.

Ques. Did you see the plainer which you say you were about to buy?

Ans. We did.

Ques. What was its name, where was it located at time you saw it & what parts were wanting?

Ans. The Stillman Plainer, It was located below Rich Myers where they had been running it.

I don't remember all the parts wanting. It needed the Cutter head, some bolts & some belting.

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Ques.

Did you write the letters filed with Mr. Stittman's deposition on the part of yourself and Mr. Moore?

Ans.

Yes sir.

Ques.

Are the statements made in these true?

Ans.

Of course.

Ques.

Did you sign the notes in bill filed marked "K," if so did you read them, understand all that was written in the face of said notes?

Ans.

We signed the notes. We read the notes. I did not understand the clause which reads "for plaintiff that was relieved from Gouge & Smith."

Ques.

Was the trade for the plaintiff concluded at time you signed the notes when you say you, Moore & Hall were present?

Ans.

Yes sir. But the repairs were to come up -

Ques.

Did you not introduce on the trial before the justice, J. B. Mygall, a witness who swore that he was

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present and heard the Trade
at the time it was made?

Ans. Yes sir, he was present when
the Trade was made but
was not present when the
notes were signed. The Trade
was made at Hale house

Ques. Had you purchased the Hale
plowman before you ordered re-
pairs from Stillman as seen
from your letters filed with this
deposition?

Ans. Yes sir

Ques. Did not Mr. Hale knock off
\$4.50 from what he asked
you for the plowman by re-
ason of repairs being wanting,
and did you not at this time for
so doing give him a pair of
deer horns which you said
you had found on the road?

Ans. No he did not knock off anything for
want of repairs. Mr. Moore had
a pair of deer horns but I don't
know what he did with them.

Ques. When did you first make
complaint to Mr. Hale by
reason of his failure, as you
claim, to furnish repairs?

Ans.

It was sometime after - I don't remember sometime after the time expired -

Ques.

Was not the belt tightener broken and did you not agree that it could be fixed by a blacksmith for a small sum, perhaps \$2.50?

Ans.

I don't remember. There was a bar broken that the belt worked on. The night we concluded that it could have been fixed by a ^{ingenious} ~~ingenious~~ blacksmith.

Ques.

Did you not order the very parts that were wanting in the plow you got from Mr. Hale?

Ans.

Yes sir, it might have been the very same things, but don't remember whether it would exactly fill the bill or not.

Ques.

Did you not order a belt tightener?

Ans.

I did, I think.

Ques.

I here show you a cut of a plow marked 'X' is it a cut of the machine which you bought of Hale & Co.?

Ans.

I believe it is.

Ques. Is the part in this cut which is marked c in ink, what is called the belt tightener?

Ans. I don't know exactly, but guess that it would be.

Ques. Then you are not very familiar with plain machinery are you?

I never run a machine in my life. I am not very familiar with them.

Ques. What would such a machine as you purchased from F. D. Hale also. cost new?

Ans. I don't know.

Ques. What would it cost to buy the repairs necessary to put it in running order at time of purchase?

Ans. I don't know exactly, I don't know exactly what it needed. I suppose from \$10⁰⁰ to \$20⁰⁰.

Ques. You say ordered repairs for the machine which you thought of buying, who told you what to order?

Ans. Mr. L. M. Livesay

Ques. Can you examine a picture or tell what it wants?

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Ans.

I don't know that I could -

Re-examined by Defendants.

Did you intend the repairs you ordered for the Machine called the George D. Hale & Co. Machine, or did you intend to use them on and for another planing Machine.

Ans. - My intention was to use them on the other one.

At the time or times you made said order, did ^{you} intend to ever use the Geo. D. Hale & Co. planing Machine.

Ans. We did not intend to use it unless he would make good the lost time & damages. Would you have signed the three ^{for} ~~affidavits~~ filed with complainant's bill if had have noticed the stipulation therein: "For an answer that was replied from Honce & Hunt."

Ans. No Sir. If I had give it any thought or saw it in there I would not, I had not bought a planer that come to Mr. Hale in that shape. When I say Mr. Hale I mean Geo D Hale & Co -

Ans.

Did you and your partner, Mr. Moore, examine the plainer for yourselves, & did you not see what you were buying?

Objection because witness has been examined & turned over to Dfts, & because the question is in Chief.

(S^r A. J. Orr. ally.

Ans - No, I didn't examine the plainer but very little, from the fact he said he had the repairs necessary to run it ordered up. Mr. Moore looked over it something like I did. I did not pay much attention to Mr. Moore's examination of it. Yes, we saw it. And further this deponent saith not,

C. F. J. Carter

James M. Moore another witness of lawful age being duly sworn deposes & says: —

Would you have signed the notes filed with complaints bill if you had have noticed the stipulation or statement in them: "for one plainer that was replied from Hon. T. Hunt."

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Ans.

I don't think I should, from the fact that Mr. Hale told ~~you~~^{me} that he bought the Plainer himself directly from the factory & sold it to some parties, I don't remember whether he said Gam or who. They had used the plainer to build two houses & had commenced a third job but I think he said they did not complete the last house. The time he had given them to pay for it had elapsed & they hadn't paid for it & he took it up for the purchase ~~price~~^{price}.

Who was to pay for the repairs needed, you & Carter, or Geo. B. Hale & Co.

Ans

My understanding was that we were to have the machinery ~~fixed~~^{put} up for the price in the face of the notes. The price of the machine was a little more but he knocked off a little for the buck's horns. About \$75⁰⁰ was the price agreed upon at first. Since Mr. Hale or Geo. B. Hale & Co furnish the repairs as you under-

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stood the Contract

Ans.

We never got any repairs at all -

Within how many days were they to have been furnished

Ans.

I don't remember, but they were to have a reasonable time.

Are you a practical house builder

Ans.

Yes sir. I have worked lumber dressed by machinery. I have built houses where none of the lumber was prepared by machinery. The difference in costs of building to the one who does the work in putting up hand prepared lumber & machine lumber would be about $\frac{1}{4}$ fourth that is, it would cost $\frac{1}{4}$ more by hand -

I think we were damaged by Mr Hale not complying with the contract as we understood it \$100⁰⁰ -

Examination.

Ques.

What repairs were needed for the machine you bought of Geo. D. Hale & Co.

Ans.

There were some ^{twists} belts, some ^{twists} belting, & there was a bar broken we styled

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the belt tightener, & possibly some bolts were needed.

Q. What would the repairs have cost?

Somewhere from \$8⁰⁰ to \$20⁰⁰ possibly not more than \$8⁰⁰ or \$10⁰⁰.

Ans. What would have been the cost of this machine new?

Ans. I don't know just what. My best estimate would be about \$125⁰⁰.

Q. Who was present when the trade for this plow was completed?

Ans. Myself, Geo Hall, Mr Carter & J. W. Blodson.

Q. Did you not trade for this machine sometime previous to this subject to Mr. Carter's approval?

Ans. No Sir.

Q. When you & Mr. Carter went to Mr. Hall's store, did you not examine the machine, & for ascertaining what was needed as repairs, did not Mr. Hall reduce the price \$45⁰⁰ to cover these repairs? Mr. Sir not as I understood it.

Ques. What was the understanding as to repairing the belt fastener?

Ans. There was no permanent understanding about it.

Ques. Did you individually, or any member of the firm, order repairs for this same plainer?

Ans. I did not. I did not order any repairs for any plainer myself. These letters were written by Mr. Carter to see if repairs could be gotten for either machine. The repairs to one would work on the other. I ~~do not~~ know whether about what the Hall Machine needed. I don't remember distinctly whether the repairs ordered by Mr. Carter would have covered all the repairs lacking in the Hall Machine or not. I am not certain but think there were more parts lacking.

Ques. Were repairs ordered by Mr. Carter shipped so what was the bill?

Q. Ans They were never shipped to my knowledge.

Ans. Did I not tell you some time in Sept or Oct. 1893, that I had these notes for collection, & did you not tell me, at that time & standing on the porch down at Gibson's brick store, in this town, that you owed the debt & would make arrangements to pay it soon, or words to that effect?

Ans. No sir, I did not.
You presented the notes, but I told you that we had enough against them to beat you & that we did not aim to pay them.
And further, ^{this} deponent saith not.

James M. Moore

Virginia Lee Co. L. L. L.:

I, D. C. Sewell, a Notary Public for ~~the~~ County aforesaid in the state of Virginia, do certify that the foregoing depositions of John B. Mygal, W. A. Orr, J. F. Alberts, C. F. T. Carter & James M. Moore

Sworn
were duly taken, ~~Administered~~ to &
Subscribed before me at the
time & place mentioned in the
Caption & adjournment herein &
for the purpose therein mentioned.
Given under my hand this
the 12th day May 1894.

D. S. Sewell
Not. Pub. for
Lee Co., Va.

C. F. J. Carter et al

ads } Depositions

Geo. D. Hale & co.,

Received from
Notary Public before
whom taken &
filed this 13th day
of May 1894 -

S. V. F. Richardson
DC

Not Fee - 6 50

Wit - " 1 50

G. D. Hale & Co
 }
 C. R. T. Carter & al. }

The deposition of Geo. D. Hale taken before me Mr. P. Armistead, a Notary Public for Hawkins County Tenn., at his office in Rogersville Tenn., on March 1st 1894, pursuant to agreement, between the hours of eight o'clock in the morning and four in the evening, to be read in evidence in behalf of G. D. Hale and H. C. Jarvis, partners in trade doing business under the firm name and style of Geo. D. Hale & Co., in a certain suit in equity in the Courts of Lee County Virginia, wherein said G. D. Hale and H. C. Jarvis are complainants, and C. R. T. Carter, Jos. M. Moore and Jno. B. Mygal (Justice) are defendants -

Geo. D. Hale a witness of lawful age, first being duly sworn, deposes and says -

Ques. 1st Are you a member of the firm of G. D. Hale & Co of Rogersville Tenn -

Ans -

Yes

2 Who composes or composed said firm

Ans -

H C Jarvis & G D Hale

Quest 3 State whether or not James M Moon and
C. F. J. Carter are indebted to said firm, if
so in what sum, and how evidenced?

Ans They are indebted to said firm seventy
dollars & fifty cents evidenced by 3 notes two
25⁰⁰ Notes & one \$20⁰⁰

Quest 4 Has any part of this sum been paid?

Ans No Sir.

Quest 5 What was the Consideration of this indebtedness?

Ans It was for one second hand Plainer

Quest 6 State whether or not any Member of your firm,
or the firm itself, was to furnish any repairs
to said plainer?

Ans The firm or any member of the firm
never agreed to furnish any repairs for
the plainer.

Quest 7 State whether or not, there was any agreement on
your part or that of the firm to do any thing, more
than to deliver the plainer as it was at the time
of the trade, if so was this part of the Contract
on your part or that of the firm Complied
with in full?

Ans There was no agreement either upon my part
or the firm of J. D. Hale & Co to do any thing
more than to deliver the plainer at agreed
price. There was a slight modification
of the Contract on the day Capt Moore
& Carter took plainer away - on the day

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I agreed to sell the plainer to depts
Mr Moore gave me a written statement
showing that he had agreed to purchase the
plainer at the price of seventy five dollars
subject to the approval of his father
Mr Carter. A few weeks after this they
came for the plainer, and on examination
they found a piece of the machine broken,
and we all agreed it could be fixed
by a Blacksmith. and for this I
gave them four dollars & fifty
cents off making price \$70⁵⁰ instead
of seventy five dollars. They took
the plainer just as it was & upon careful
examination on two occasions.
The price at which it was sold was
less than half the list price of a new
machine of the same kind.

I gave back to Mr Moore the written
statement above referred to on the day he
took the machine

To induce me to give the \$4.50 off Mr
Moore gave me a pair of Derrshorn
on one horn which he had found on
the road that morning coming to
Racineville. So he said.

Quest 8 State whether or not either Moore or Carter has ever claimed a failure of performance of Contract on your part or that of the firm or any member of it up to the time you had an action instituted against them for the Collection of the notes which were given in payment of said Machine?

Ans They never have claimed that I or any member of the firm failed to comply with our part of the Contract previous to the time you had suit brought

Quest 9 State all the facts you know as to the order of repairs that were needed for this plainer at the time of the purchase of same by said Moon and Carter, and whether or not said repairs were ever shipped?

Ans After one or more notes were due for plainer I went to Lee Co. Va. to see said Moon & Carter to get the money due on the notes. They said to me that they had ordered the repairs from J. V. & C. Stettman or The Stettman Rich Co. Wrosterly R. Road Island & that said Co. had not shipped them. I then came home & wrote ~~them~~ ^{in Stale & Campbell name.} & wrote ~~them~~ ^{Abx} why they had not shipped repairs

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to C. F. T. Carter & J. M. Moore of
Blackwater Va. They replied to us that
they had shipped them by express to
Plumpton Luf Lee Co Va. as for the
said Carter & Moores order & they
refused to take them from express
officer & they were returned to them

This deposition is objected to because irrelevant and immaterial, there being no such suit
in the Circuit Court of Lee County Va., and because the bill neither asks for nor prays for a
decree for \$70.⁵⁰ or for any other sum of money, William A. Orr, atty. for deft.

Cross Examination by Defendants;

Ques 1 Did you write a letter to Jas. M. Moore on
the 28th day of June next before the Contract
named in this Case?

Ans My recollection is that I did write to
said Moore nothing why they had
not come for Plaines Mr Moore had bought
subject to Carters approval.

Ques 2 Did you write a letter to Jas. M. Moore, at
any time in which you agreed that either your-
self or your firm would furnish said repairs?
I have no recollection of agreeing to
furnish repairs but promised to assist
them in getting repairs for Malvern &
They never have asked me to assist them
in getting repairs or to furnish same.

Ques 3 Did you write Jas. M. Moore a letter about the
matter before the date of the notes or trade?

Ans I did write said Moore a letter before notes were taken
and after Moore agreed to take Plaines subject to Carters
Approval

Quest 4 Did you represent to the defendants or to either of them that the planing machine sold by you to them was as good as new, except the repairs named?

Ans I did not. I sold it ^{to them} as a second hand Planer & as ^{it} was.

Quest 5 Where did you get said machine, and where did your vendor get it?

Ans I got it from Louder Trent & they got it from a Mr Leveay.

Quest 6 Did you say in a letter to Jas. M. Moore that the planer would be ready for use on the 15th of July next after the trade?

Ans I do not think I said any thing of this kind in a letter to them but the Planer could have been used if they had had fixed what we agreed that the Blacksmith could do.

Quest 7 When were the repairs at Pennington Gap &c? of my own knowledge I know nothing about them being there. but said Moore & Carter orders & the Manufacture letters which are on file will show.

Quest 8 Have you given a deposition about this matter before?

Ans I have.

Quest 9 Did you give the defendants notice, that they were there, if so when & how?

Ans The Manufactures wrote me they had shipped them

on Said Moors & Carlers order & that they
refused to take them out of Express office & I
sent this letter to ~~them~~ Said Carter & Moore

This question is objected to because, 1 It is meaning-
less, and has no Connection with the previous question
or any thing that is Contained in this deposition,
it is therefore irrelevant, impertinent

E. W. R. Ewing, P. D.

Quest 10 Did you pay any thing for said repairs?

Ans I did not

Quest 11 Who did you order them from and from
what place?

Ans I never made any order for repair
from any one or any Place for
Said Plaines

~~Quest~~

Each of these questions is objected to because
they assume that the witness has made a statement
which he has not, they are therefore very impertu-
nent,

E. W. R. Ewing, P. D.,

Quest 12 In whose name was the order made?

Ans I know nothing about the order.

Quest 13 When did you mail the order?

Ans I never mailed any order

This question is objected to for reasons stated
above,

Ewing, P. D.,

Quest 14 Of what did the repairs consist?

Ans I do not know.

Quest 15 Were they shipped by freight?

Ans I do not know how they were shipped.

Quest 16 In whose name were they shipped?

Ans I do not know.

Quest 17 If they were shipped in the name of X to the defendants, why or for what reason did the Shippers write to you about it?

Ans Said Moore & Carter request Hale & Campbell to write to Manufacturer why they had not shipped repairs to them on their order from Black Water V.A. as requested & I wrote Manufacturer & they wrote me & we sent letter to Said Moore & Carter.

Quest 18 Did the Shippers write you about it after the order was made?

Ans Not until Hale & Campbell wrote them at request of Said Moore & Carter.

Quest 19 Did you know that this plaining machine had been much used when you sold it to the defendants, How long before you sold it was it new, and how much had it been used according to your information, and how long had it been used according to your own knowledge?

Ans I knew the machine had been used but do not know how ^{long} or how much.

Quest 20 Who fostered the order for the repairs?

I do not know

Re Examination

Quest

At what time was the trade between you or your firm and said Carter and Moon for said plainer concluded; at the time the same was delivered, or by letter prior to the delivery of the same;

Ans

Trade was concluded day of delivery of plainer to said Moore Carter after thorough examination by said Moore Carter

In view of the facts set forth in this answer, the questions propounded by defendants in this case relative to what should have been said in a letter to Jas M Moon prior to the trade are objected to because they have no connection with this suit

Ewing, for Complainants,
G. D. Hale

The foregoing deposition was taken before me as stated in the caption, and the answers of the witnesses reduced to writing by himself in my presence, and I certify that I am not interested in the cause and that I sealed the same in an envelope directed to A. B. Mimsay Clerk Circuit Court, Louisville Va, and put same in the post office at

Rogersville Tenn, without being at-
-tended or out of my possession
after taken - Given under my hand
and seal of office at office in
Rogersville Tenn the 1st day of
March - 1894 -

W P Armstrong
Notary Public

George D. Hale et al

Depositions X.

C. F. T. Carter et al

Received by mail in good
condition March the 3rd 1894
filed

A. B. Munsey Clerk

The within deposition
is excepted to because
it appears from
the caption and
certificate that it
was taken to be
made as evidence
in a Chy suit wherein
Geo. D. Hale & H. C. Jarvis
are plaintiffs, and
not to be made in
this case of George D.
Hale & Geo. C. F. Carter,
J. M. Moon & J. B. Wygal, Justice
March 5/ 1894 Wm. A. Orr, atty for
C. F. T.

X.

X.

The deposition of E.W.E. Ewing, taken before me, H.C. Joslyn, a Justice of Lee county, Virginia, on the 21st day of May, 1894, at the office of W.A. Orr, Sr., in Jonesville, Virginia, pursuant to agreement, which deposition is to be read as evidence in behalf of the Complainants in a certain suit in chancery now pending in the Circuit Court of Lee county, wherein Goe. D. Hale & Co. are complainants, and C.F.T. Carter and Jas. M. Moore are defendants.

Present William A. Orr for defendants.

E.W.E. Ewing, a witness of lawful age, being duly sworn says:

I represented Goe. D. Hale & Co. before the Justice who tried the original warrant in this case. On the notes filed with the bill. On that ^trial no formal pleading was done. The defendants claimed to have been damaged by reason of the alleged failure on the part of Geo. D. Hale & Co. to furnish repairs to the machine for which the notes and the debt of \$70.00 are the evidence. The said Carter and Moore did not deny executing or owing the notes, but claimed that they could be offset by reason of the damages which they claimed to have sustained by reason of the failure to furnish these repairs. After offsetting the notes amounting to \$70.50, the Justice gave judgment for \$100.00. I then asked on behalf of the the plaintiffs an appeal to the county court. At this time it was nearly dark and the Justice told me that he would be back to Jonesville the place where he sat to hear the case, and the place where he had usually tried causes, before the expiration of the ten days allowed for completing appeals of this nature. He also informed me that he would in a short time start to Chicago, Ill., and that if he went before the expiration of the ten days, and before the appeal had been completed, that he would come to Jonesville and complete the same, unless he was sure that he could go and return before the expiration of that time. He said that if he went without returning that on his return from Chicago he would come through Jonesville and attend to the matter for me and my clients. This was the last time I saw him

him until the ten days had expired. I made every effort possible to take advantage of the remedy afforded me, but was prevented from so doing by reason of the action of the trial Justice, J. R. Wvgal. I learn^{ed} that he had gone to Chicago¹ and I made diligent inquiry as to his return, both before and on the last day of the ten days. I was told by a neighbor of his on that day that he had not returned to his home. This was in the morning and after the train and only train on that day from Chicago had gone up. I watched diligently and he did not come through Jonesville, on that day. Had the trial Justice remained in the county I could and would have completed the appeal before him. As a last resort, and following the analogy of the law for granting new trials in the absence of the trial Justice, I applied to another Justice of this county who made the indorsement found on the warrant filed with the papers in this cause.

And further this deponent does not say.

E. W. R. Ewing

I, H. C. Joslyn, a Justice in and for Lee county, Virginia, do certify that the above deposition of E. W. R. Ewing was taken, sworn and subscribed to before me for the purposes and at the place mentioned in the caption. Given under my hand this May 26, 1894.

H. C. Joslyn J. P.

The above deposition is excepted because irrelative and immaterial. May 25, 1894.

W. A. Orr, Atty.

The above deposition is further excepted to because it is evidence in chief - and because the plaintiff had closed his evidence in chief and so had the defendants at the time of taking this deposition. This May 29th 1894.

Wm A. Orr, Atty.

*Bro. Orr no
more taken, I had not
yet read in chief.
E. W. R. Ewing*

Geo. W. Hale & Co.

v. } Dep. Living.

C. F. Porter, et al

Received from
H. C. Joslyn before
whom taken & filed,
this May 2^d 1894,
A. B. Munsey
Clerk

J. P. Lee 75 cts

Depositions of G. D. Hale, witness for
Completts, taken before me, M. P. Armstrong a
Notary Public for Hawkins County Tenn on
the 8th day of Sept 1893, ^{between 10 & 4 O'clock P.M.} by request
of Completts, no notice having been
produced, deposition taken at
my office in Rogersville, Tennessee,
to be read in evidence in the Cause
of G. D. Hale & Co vs James M. Moon and
J. F. Carter Pending before H. C. Josely a J. P.
for the Co Va. Present the witness.

Said witness being duly sworn deposes as follows:

Question 1 What is your age

Ans 38 Years

Ques 2 Where do you reside

Ans In Rogersville Tenn

Ques 3 Are you a member of the firm of G. D. Hale & Co

Ans I was a member of the firm.

Ques 4 Who compose this firm

Ans G. D. Hale J. F. C. Jarvis

Ques 5 State the indebtedness of Jas M. Moon & C. F. J

Carter to this firm, and how evidenced

Ans They owed the firm above mentioned \$70.00 evidenced by 3
Notes ~~each~~ for 25.00 each & one for \$20.00 due
as face of notes will show

Ques 6 What was the consideration of this indebtedness,

Ans it was for a Planing machine

Ques 7 Were you or your firm, or any member of it

to furnish any repairs for this Machinery, If
Not, was there any agreement on your part
or that of the firm to do any thing as a
part of the Consideration of this debt, if so,
was there a Compliance on your part or
that of the firm,

Ans + I was not ^{to} furnish them any referrals. only told them where they could get them & assist them in so doing but not to pay any thing on them.

I did assist in getting referee for Plainville & they
refused to take them from the office at Plainville & Co. as
the Company informed me by letter & I gave them the letter when
I went to see them after sales were due.

gives 8 Has either Moon or Carter ever claimed a failure of performance of Contract on your part up to the institution of this action. Give all the facts within your knowledge of the shipment of repairs, by some Company to Mepo Moon and Carter &c.

They never have claimed a failure on my part
of the Contract.

They ordered the bairs & they were shipped
to them C.O.D. at Pamptun Lat V.A & they
failed to get them from the officer at
Mfg Co wrote me by request of the Express
Co to see them why they would not take them
& gave them the letter & they said they would
get them at once

G. D. Hall

State of Tennessee }
Hickory, Gauley }

W. P. Armstrong, Notary
Public for Hawkins County
State of Tenn. do hereby Certify
that the foregoing deposition
was duly taken, reduced to
writing and signed by the
witness, before me, at the
place and the times therein
mentioned

In witness whereof I have
hereunto set my hand
and Seal Sept 9 1893

W. P. Armstrong
Notary Public

Notarys fee \$1.00

Deposition of
G D Hale, Witness
for Complots

G D Hale & Co
vs
Jas M. Moore &
L F J. Carter

"W. A. O."

The deposition of A. B. Muncy, Clerk of the Circuit Court of Lee County, Va. taken before me, J. A. H. Hyatt, ^{Circuit Court} ~~Clerk~~ in ~~City~~ ^{County} for the said County and State, pursuant to agreement, at the Clerk's Office of the Circuit Court of said County and State, in Jonsville, between the hours of 9 A.M. and 4 P.M., to be read as evidence on behalf of E. F. Carter and James M. Moore, in a certain suit in Chancery depending in the Circuit Court of Lee County, Va wherein they are defendants and George D. Halden are plaintiffs.

Present. Wm A. Orr Atty for Defs and E. W. R. Ewing, Atty for Plff.

A. B. Muncy being a witness of lawful age and being duly sworn deposes and says:

1st June - Was there a ~~spa~~ ^{subpoena} in City issued and made returnable in this case, by you, to the 1st July Rules, 1894? and were you Clerk of the Circuit Court of Lee County, Va then, and are you such Clerk now?

This question is objected to because the records of the office speak for themselves, and are the best evidence.

Ewing for plff.

There was. I was. I am

2nd June Did the defendants appear and plead

2)

in Abatement at the 1st February Rules, 1894, in this cause?

This question is objected to because the records of the Circuit Court Clerk's office are the best evidence and should speak for themselves.

Ewing, p. 9.

They did

3rd June

Was said plea filed by the defendants before another writ issued in this case and made returnable to 2nd February Rules, 1894 - and is it a fact that another *Spa.* in *Chy* was issued by you in this case & made returnable to 2nd Feby Rules, 1894.

Objected to for reasons stated *supra.* Ewing.

ans

4th June

It was. There was. Were there two *Spas.* in *Chy* issued in a suit in Chancery in said Circuit Court of Lu County in which H. L. K. Morrison Judge of said Court granted an injunction and endorsed the same on the bill on the 18th day of January, 1894?

Objected to for reasons *supra.* Ewing.

ans
5th June

They were
Is there any other suit in Chancery
now pending in the Circuit Court of
Lu County, Va wherein George D.
Hale & Co are plaintiffs and L. F. J.
Lester and James M. Moore are
defendants?

Objectionable for some reasons. E.
ans There is not

Examination by plaintiff.
Jues. Are all the papers and records
in this case in your office?

ans They are

Jues. Will you please mark the
paper which you say was the sub-
poena issued in this case by
you and made returnable to
the 1st Feb. rules, 1894?

ans I have marked it thus (1)

And further this document pageth
not.

ARB Munsey

Virginia, Lu County, Co. Ct.

I John A. J. Hyatt a Commissioner in Chy for
the Circuit Court of Lu County, Va do
hereby Certify that the foregoing deposition
was taken at the time and place
& for the purposes named in the
Caption and that the same was

to F. L. Leath et al
advs Depts.

Pro. D. Hale & Co

Received from J. A. G.
Hyatt the Commissioner
in Chancery before whom
taken and filed this Feb'y
the 23rd 1874
A. B. Muncey Clerk

Used on abate-
ment—

758

Subscribed and Assent to
before me by A. B. Muncey.
this February 23rd 1874.
J. A. Hyatt Commissioner
Chancery Clerk

The deposition of Vincent C. Stillman to be used as evidence in behalf of George D. Hale & H. C. Jarvis in certain action in Circuit-Court of Lee Co., Va., wherein said Hale & Jarvis are plaintiffs and C. F. T. Carter & James M. Moore and Jno B. Hygel (Justice) are defendants.

question Your name, ^{answer} V. C. Stillman

" Are you a member of the firm of T. V. & W. C. Stillman.

Answer I was till the dissolution of the firm upon the death of T. V. Stillman Aug. 21st 1891. I am now a member of the firm of Stillman-Rich Machine Co., their successors.

question State whether or not the firm of T. V. & W. C. Stillman and the Stillman-Rich Machine Co., has had a correspondence with Mr C. F. T. Carter of Blackwater Va., relative to a certain plainer said to have been purchased from a Mr Levesay, if so tell all about said correspondence.

Answer The Stillman-Rich Machine Co., received in Aug. 1892 a letter from C. F. T. Carter addressed to ~~the~~ T. V. & W. C. Stillman and dated Blackwater Lee County Va., Aug. 15th 1892 which is here appended marked "A"
A reply to said letter, a copy of which is also

hereto attached marked "B"
And on or about the 30th of Aug. 1892
we received another letter from Mr
C. F. T. Carter dated Blackwater Lee Co.,
Va., Aug. 25th 1892 addressed to Stillman
Rich Machine Co., the original of which
is hereto appended marked "C" And a copy
of ~~the~~^{our} reply dated Sept. 7th 1892 is hereto
attached marked "D"

And on or about the Sept 30th 1892 received
another letter from Mr C. F. T. Carter
dated Blackwater Lee Co., Va., Sept 25th
1892 addressed to Stillman-Rich Machine
Co., the original of which is hereto attached
marked "E". The foregoing letters relate to
the sale & purchase of certain parts of
a machine & moulder And as per order
of letter of Sept 25th 1892 the Stillman-Rich
Machine Co., shipped C. F. T. Carter said
parts of machine & moulder to Pennington
Gap Va., by Adams Express Co., C. O. D.
Some time after said shipment the Still-
man-Rich Machine Co. were notified by
Agent of Adams Express^{Co.} at Pennington
Gap Va., through Adams Express Agent
at Westley R.D. that the Express package
consigned to C. F. T. Carter from Stillman
Rich Machine Co., had arrived at Pennington
Gap but was refused by C. F. T. Carter

at a later day the Express package con-
taining parts of machine and moulder such
as shipped to C. F. T. Carter Remington Gap Va.,
was returned to Stillman - Rich Machine
Co., marked "refused" not accepted by
consignee, or words to that effect.

State of Rhode Island
County of Washington Co.

Vincent C. Stillman

Tested R. I. Feb 27th 1894 3 P.M.

(Personally appeared Vincent C.

Stillman who being duly sworn ^{by me} made
answer to the foregoing questions to be
the truth to his best knowledge and belief
and subscribed to the same in my presence

Frank E. Rich

Notary Public,

in and for said County and State.

George D Hale et al

Depositions G-

G-

C. F. T. Carter et al

Received by mail in good
condition March the 2nd and
filed March the 3rd 1894

A. B. Munnick

The within Deposition is excepted to
because it appears from the Caption
that it was taken to be used as
evidence in a chy suit of George
D. Hale & H. C. Jarvis vs C. F. T. Carter,
J. M. Moore, & Jno. B. Luygal, Justice,
and is not a deposition in this
case of Geo. D. Hale & H. C. Jarvis
& C. F. T. Carter, J. M. Moore and
J. B. Luygal, Justice

And it is also excepted to because
irrelevant & immaterial. A plaining
machine bought of Linsay has
nothing to do with this litigation
This Mch 5th 1894.

Wm. A. Orr

Atty. Gen.
Ex. 10

1892

"A"

August 15

Blackwater Lee. Co. Va

Mr. T. V. S. V.C. Stilman

Dr. Sirs.

I have purchased a planer from
a. Mr. Livisay that was sold to him by
you. In addition bearing the address of
T. V. S. V.C. Stilman Manufacture
Westly R. I. which needs some
repairs you will please send me
a. repair Book and Catalogue of your
machines

Yours Truly
C. F. D. Carter

LW in memory
Kyles F. e

The Stillman-Rick Machines.
Successors to J.V. & V.C. Stillman.

General Machinery
and
Manufacture of
Paper Cutters
Improved Waste Disasters
and Working Machinery
etc

"B"

Westerly Aug 21 1892

C. F. Plurter Esqr.

Blackwater Va

Dear Sir:

We are duly in receipt of your favor of
Aug 15/92. And in reply would say
that as we make several styles of
planer we send you circular cut
of Mather and Moulder which we
~~have~~ sold Mr Linsay. we have no
circular of parts of the planer but if you
will indicate the parts you are in need of
we will quote prices.

Yours truly

The Stillman-Rick Machine Co.

August 28 1892

To The. Stillman Rich Machine Co.

"C"

Westerly R. I.

Dr. Sirs I wrote you some time ago. Concerning repairs for my machine. This machine is the machine sold to L. W. Livisay Kyle. Ford Turn By The. Stillman Co. Westerly R. I. inclosed you will find returned circular. with Broken parts indicated by a mark. The bar that holds the tightening pulley in. Cap on. match head. one dozen standard Bolts one dozen grooved screws full outfit of bits for match head. also raw hide Belting for running feed pulleys Molding Bits &c

please send me a price of the above parts mentioned

Yours Truly
C. F. D. Carter

Blackwater Linn. Co.

70

The Stillman-Rick Machine Co.
Successors to J.V. V.C. Stillman.

General Machinery
and
Manufacturers of
Paper cutters
Improve Waste Drivers
Wood Working Machinery
&c

"D"

Wetmore R.I. Sept 7. 1892

C. F. Carter Esq

Blackwater. Lee Co. Va

Dear Sir:

Replying to your favor of Aug 25.
would say that we will furnish the
following parts of Matchless Moulder for
14.⁰⁰ C. O. D. or cash with order.

1 Bar for tightening tightening pulleys. 1
Guard cap for moulder head. 1 doz standard
Bolts. 1 doz screw drivers. full outfit
of cutting bits. and trivet belt for
feed pulleys &c

Yours Truly

The Stillman-Rick Machine Co.
R

"E"

Dec

Blackwater Sept 28/92
To The Stillman Rich Machine Co.
Gentlemen as I made order
about 10 days ago for repairs
for our machine as I wrote
you it is the machine you
sold to Mr. Linsay Rife Ford
Then the repairs I ordered amounts
To one guard cap. for matcher
head twist - setting for feed
S. tightening pulley tightening pulley
bar. one. Doz Standard Bolts
one Doz ground screws one set
of matcher Bits as we made
the order 10-days ago I have
heard nothing from you we
hope you will forward them at
once to Seemington Gay - ^{by 24/12} C & D
I. oblige your. V. C.
C. F. J. Carter

Morristown, Tenn.

July 11 - 1894.

Mr. E. W. R. Ewing,

Rogersville, Tenn.

Dear Sir:-

I hardly think that I will come to Rogersville on the 13th inst. Will put my case on the finality of the J. P.'s judgment - & as your witness at Rog - Can I know nothing on that point I do not think it necessary to come there -

But, you prepare a notice & write an acceptance thereof & sign my name thereto, so as to enable you to take any Depo's you may desire.

Very

Yours Respy,

Wm. A. Orr

July 22/92

Virginia, Lee county, to wit:

I, A. B. Munsey, Clerk of the circuit court of said county, do certify that E. W. Ewing, personally appeared before me and made oath that he is the attorney for Goe. D. Hale & Co. in a certain action now pending in the said court, wherein they are ^{in to house} complainants and C. F. T. Carter and Jas. M. Moore are defendants, and stated also under oath that he ~~was~~ not ready to submit this case because there is other material and important evidence to go in, and that he, and he believes and is informed that his client did, ~~make~~ every effort possible to secure the same for this present term of the court. He also stated that one of the witnesses is a man by the name of Armstrong, who lives in the town of Rogersville, Tenn., and that the facts which he will prove only recently came to his knowledge, and that at the time this information was received the said Armstrong was away from home and could not be found, neither could he be found until too late to take his deposition for this court. Said Ewing ^tstated that he does not make this motion for continuance for any purpose of delay simply, but in order that his client may have the benefit of what he believes to be legitimate and material and important evidence. Given under my hand this the 4th day of June, 1894.

A. B. Munsey Clerk

Geo. N. Hale also,

v. } Aff. for Cont.

C. F. J. Carter, et al.

G. D. Hale & Co
J. M. Moore &
C. R. T. Carter

Deposition of W. B. Gillenwaters, John
Armstrong, O. R. Gillenwaters ^{and L. A. Moore} taken before me
J. C. Stamps a Notary Public for the
County of Hawkins in the State of Tennessee
on the ^{16th} 13th day of July 1894 in pursuance
of the Annexed Motion at Rogersville in
the County of Hawkins, State of Tennessee
between the hours of 11 O'clock
A.M. and 4 O.C.P.M., to be read
in evidence in a suit in which G. D.
Hale & Co., Composed of G. D. Hale and
H. Jarvis, is plaintiff and J. M.
Moore and C. R. T. Carter are defend-
ants, pending in the Circuit Court
for the County of Lee in the State
of Virginia, for and by W. B. Gillenwaters
Sol for Plaintiff -

W. B. Gillenwaters, being first duly

sworn, deposed and said in Answer
to interrogatories as follows: -

Deems. 1st By Plaintiffs atty.
About July 22^d, 1892 did two
men stop at your house in this
County, & look at a plow that
was there?

Answer Yes.

2 Did they have a plow in their
wagon, & if so, was it like the
one you had there stated?

Answer Yes, they had a Plow in their wagon
& it looked like the one I had.

3 Did they say where they had gotten
their plow, & if so where?

Ans. They said they had bought it of
G. D. Stale of Rogersville.

4 Did they say anything about buying
the plow at your house, if
so what?

Ans. I don't recollect that they did, but I
stated to them that the plow I had
was for sale.

5 Was the place you had in good repair?

Ans. Yes. - It didn't need any repairs whatever, Did they or either of them say anything to you about buying.

6 To whom did the place you had mind belong?

Ans. To E. Gillmwater & Luther F. Brown

7 Where did you live during July 1892?

Ans. I lived in Hawkins County Tennessee seven and one fourth miles from Rogersville on the main road from Rogersville to Jonesville Virginia,

8 What is your age & occupation?

Ans. I am 44 years old, and a merchant.

W. K. Gillmwater

Next witness John Sacramento being first duly sworn, deposed and said in answer to interrogatories as follows:

Ques. 1. What is your age & occupation, & where do you live?

Ans. I am 23 years old, - laborer,
I live in Stark's County, Tennessee.
2 Where did you work during
July 1892?

Ans. I worked for Hale & Campbell's stores in
this store in Rogersville

3 Where you present when G. S. Hale
bought and sold to J. M. Moore &
O. F. Carter, a Planer during
the latter part of July 1892?

Ans. I was.

4 Was there anything said at that
time in regard to G. S. Hale's furnishing
any repairs for said Planer?

Ans. No sir.

5 Please state what was said in
regard to repairs made for said
Planer?

Ans. There was a piece broken on the planer,
and it was agreed between Mr. G. S. Hale
and Mr. Moore and Carter that it could
be fixed at a cost of two dollars
and fifty cents, which was deducted
from the cost of the planer,

#5
Ques. 6. Was there any thing more said about
other repairs during the Trade?

Ans. No sir:

7 Did you keep to load the plow &
see them driven out?

Ans. Yes sir:

8 Are you now employed Occup.
G.D. Hale?

Ans. No sir:

John Armstrong

OR Gillumwater being first duly
sworn, deposes & saith in answer
to interrogatories as follows:

Ques. 1. What is your age & occupation,
& where do you live?

Ans. I am 43 years old. Harness maker
by occupation. I live in Rogersville
Tennessee,

2 Did J. M. Moore or C. F. J. Carter
ever make an effort to buy a
plow owned by you & L. F. Brown,
which was sold to W. R. Gillumwater,

was at his house during the month
of July 1892?

Ans No sir: I never saw them, or ever
heard of them before -

O. K. Gillumwater

L. F. Brown being first duly sworn
deposed & said in answer to interroga-
tories as follows:

Ques 1 What is your age, occupation
& where do you live?

Ans I am 36 years of age, - a Physician,
& live 5 miles north east of Rogersville,
in Hawkins County Tennessee

2 Did J. M. Moore or O. J. G. Coates
ever make an effort to buy a
place owned by you or O. K. Gillumwater
which was rented to W. K. Gillumwater
was at his house during the
month of July 1892?

Ans No sir: I never saw or heard of
the parties before, that I remember of.

L. F. Brown

State of Tennessee
Hawkins County }

J. JC Stamps a Notary Public for the
County of Hawkins in the State of Tennessee,
do hereby certify that the foregoing dep-
ositions, were duly taken, reduced to
writing and signed by the witnesses,
respectively, before me, at the place
and time therein mentioned, pursuant
to the annexed notice.

In witness whereof I have hereunto
set my hand and affixed my
official seal at place aforesaid,
this 16th day of July, A.D. 1894.

JC Stamps
Notary Public

The foregoing depositions are accepted to become
evidence in chief and not in rebuttal, and
because they show on their face that they
nor either of them or any part of either of
them is newly discovered evidence as the
same should be in order to comply
with affidavit filed at last term, and
because immaterial. This July 19th 1894.
Wm A. Davis Atty.

I have examined the
depositions and find them
to be true and correct.
Wm A. Davis

Depositions
G. D. Hale & Co

vs

J. Mullorey
C. F. T. Carter

Received by mail in
good condition July the 19th
1894 and filed
A. B. Munsey Clerk

Z

Bill of Cash.
Jc stamps taking four
Depositions 4.00
See 34 captions endorsed
at foot of deposition
Wm A. Orr, atty.

The deposition of J. W. Bidson taken before
H. C. Doolittle a J. P. for Lee Co. Va.
on the 21st day of May, 1894, at the Office of
Wm. A. Orr, in Jounsville, Va. pursuant to agree-
ment, which deposition is to be read as evi-
dence on behalf of the defendants in a
certain suit in Chancery now pending in the
circuit Court of Lee County, Va. wherein George
D. Hall & Co. are plaintiffs and C. F. I. Carter
et al are defendants.

Present: Wm. A. Orr for Defts
C. W. R. Ewing for Plffs

J. W. Bidson a witness of lawful age, being
first duly sworn deposes & says:

I hauled the planing machine for the defendants
from Rogersville, Tenn to Lee County, Va.; I mean
the machine bought from Geo. D. Hall & Co.
I was present when the trade was stated
& made at the war house of Geo. D. Hall
& Co. & when said machine was delivered
to said defendants, but was not
present when the notes were signed on
that occasion.

George D. Hall stated that he would
furnish the repairs & pay for them himself
& that they should & would be up inside
of from 5 to 10 days - & said that Defts
should loan no time an account
of the repairs & that he would be

responsible for same & for all damages - Mr. Moore stated at same time that without he furnished the repairs that he would as soon have a load of lime stone rocks.

Moore & Carter refused to move the plow till the repairs come up as Hale claimed that they were on the road & spoke of staying all night & Hale said they would not be up that soon but to take it on & that he would have the repairs up in 5 or 10 days.

On that occasion George D. Hale represented to Carter & Moore that he had bought said plowing Machine direct from the factory & that it had only been used to build about one house & a half - & stated that it was about as good as new.

Examination by other side.

Ques. 1. What was Carter & Moore to pay for this machine?

Ans. ~~I~~ do not know what they were to pay.

Ques. 2. Did you hear the broker talked

between these parties?

Ans.

Yes, I heard the trade talked.
Mr. Moore had been there be-
fore I was there.

Ques. 3.

Was the trade made on the day
you were there or the day Moore
was there?

I do not know which day
the trade was made.

Ques. 4.

Do you know what the
trade really was?

Yes, I do.

Ques. 5.

If you never heard the trade
& do not know what day it was
made, how do you know what
it was?

Ques. 6.

Will you give the exact words
used by Mr. Hale on this occasion?

He pushed the plow out & said
"Here take it along the repairs
shall not bother you, I will
have them up in 5 to 10 days."
These are the exact words as I
remember them.

Ques. 7.

What repairs were needed to the
machine on that occasion.

Ans.

I do not know. I did not
hear them say anything about
any of the parts that were broken.

And further this respondent sayeth
not.

J. W. Bledsoe

Virginia Lee County, To-wit:

J. Henry C. Foslyn a Justice of the Peace
for the said County. do hereby Certify
that the foregoing deposition of J. W.
Bledsoe, was duly taken, sworn to
and subscribed before me, at the
time and place mentioned in the
Caption of the same.

Given under my hand this 21st day
of May 1894.

H. C. Foslyn J. P.

Geo. S. Hale vs. P. H.
vs. J. C. Chancer
vs. J. C. Carter et al.

Deposition of

J. W. Bledsoe

Received from H. C. Foslyn
the Justice before whom
taken and filed May
the 22nd 1894

A. B. Munnery Clk.

J. C. Lee 175

VIRGINIA--LEE COUNTY, TO-WIT:

TO W. P. Sprinkle Constable of said County:

I HEREBY COMMAND YOU TO SUMMON.....

James M. Moore
and C. H. T. Carter

If to be found in your District to appear at my office in said county, on the

23rd day of Sept 1893 before me or such other Justice of the said County, as may be thereto

try this warrant, to answer complaint of.....

Geo S. Hale and H. G. James, doing business under the firm name and style of Geo S. Hale & Co
and upon a claim for money not exceeding \$100, exclusive of interest, to-wit: For the sum of \$ 70.50 due

by 3 Notes, and then and there make return of this warrant,

Given under my hand the 11th day of Aug 1893.

H. C. Joslyn J. P.

George S. Hale & Co
James M. Moore

Against

James M. Moore and C. H. T. Carter
Defendants } On the 2nd day of Oct 1893
(In debt.) }
At Spotsylvania in said County.

JUDGMENT, That the Plaintiff recover of the Defendant \$ 100.00 with interest thereon from the

2nd day of Oct 1893, till paid, and \$ 3.00 for costs.

John B. Hygal J. P.

VIRGINIA--Lee County, To-wit: To _____ Constable of said County.

I command you in the name of the Commonwealth of Virginia, that of the goods and chattles of.....

_____, in your county, you cause to be made the sum of \$.....with
interest thereon from the..... day of..... 18 , till paid, which.....

_____ has recovered before _____ in a
warrant in debt, and also the sum of \$.....which were adjudged to the said.....

_____ for costs in prosecuting said warrant.

Given under my hand the.....day of 18 :

John B. Hygal J. P.

Geo S. Hale Esq } 31st day of October 1893.
 vs. } The said Geo S. Hale Esq.
 James M. Moore } having prayed an appeal from
 C. L. T. Carter } the within Judgment, in this Court
 and tendered S. V. F. Richmond as their Surety, who thereupon
 undertook; as their Surety, for the payment of the said
 Judgment and all costs and damages in case the same
 shall be affirmed, and the Justice who rendered this
 Judgment being absent from the County, an appeal
 from the said Judgment is granted The said Geo
 S. Hale Esq. to the next term of the County Court
 W. C. Worlsey J. P.

Geo S. Hale Esq
 vs Warrant
 James M. Moore
 C. L. T. Carter
 Executed this 15th
 day of Aug 1893
 W. P. Sprinkle C. L. C.
 Continued Aug
 Agreement to
 Oct. 21, 1893.
 This Sept. 23,
 1893.
 Filed 11 o'clock a m
 Oct 31st 1893
 S. V. F. Richmond
 Clerk
 A.

We, the Justice to the within warrant, hereby must
 satisfy agree to allow either side to take dep-
 ositions in the case at Reynoldsburg before W. P.
 Annandine, or any proper Officer on Sept. 8,
 1893. Such under our hands, this Sept. 2, 1893.
 Geo. S. Hale
 H. C. Jones
 C. L. T. Carter
 James M. Moore
 Geo S. Hale Esq

Virginia: At a County Court - Continued
and held for Lee County at the Court-house
thereof on Wednesday, November 29th 1893.
Geo. D. Hale vs. Jeff

vs
James M. Moore et al. vs. Jeff } An appeal from
a Justice's Judgment.

This day came the parties by their Attorneys, and thereupon the Appellus moved the Court to dismiss said appeal, which Motion being argued, it is considered by the Court, that said appeal be dismissed and that the Appellus recover against the appellants their costs in this behalf expended.

A copy

Lester

AVB Munsey Sept for
S. V. F. Richmond Clerk

Order of County Court—

Geo. D. Hale & Co

vs } Filed with Defts
Jennings and
Assess

C. F. T. Carter et al

"B"

"V. a. O."

Wm A. Orr Atty.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

! WE COMMAND YOU, That you summon *to F T Carter, James M Moore*
and John B. Regal

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said
Court on the *First* Monday in *February*, 189*4* to answer a bill in Chancery,
exhibited against *them* in our said court by

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,
the *18th* day of *January* 189*4*, and in the 11 *8th* year of
the Commonwealth.

A B Munsey Clerk.

(7)

George D. Hale et al

vs. { SUBPENA
IN CHANCERY.

C. F. T. Carter et al

E. M. R. Erving p. q.

To 1st February 1894 Rules,

Circuit Court.

Executed by Delivering
the within
bills to C. F. T. Carter
and James A. Moore
this January 23rd 1894
H. P. Armstrong Deputy
for C. E. Selanery
J. B. G.

Know all Men by these Presents, That we S. V. F. Richmond and
E. W. R. Ewing
 are held and firmly bound unto the Commonwealth of Virginia, in the sum of Three
hundred dollars, to the payment whereof, well and truly to be made to
 the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs,
 executors, and administrators, jointly and severally, firmly by these presents. And we hereby
 waive the benefit of our homestead exemptions as to this obligation, and any claim, right, or
 privilege to discharge any liability arising under this bond in any currency, funds, counter claims
 or offsets other than legal-tender currency of the United States. Sealed with our seals, and
 dated this Eighteenth day of January one thousand eight hun-
 dred and ninety four

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound
S. V. F. Richmond and E. W. R. Ewing

on a bill in Chancery against C. H. T. Carter and
James M. Moore by George D. Hale and
H. C. Jarvis

addressed to the Judge of the Circuit Court of the County of Lee, has obtained from the said
 Judge an injunction to injoin and restrain said Carter and Moore
their agents or attorneys from further proceedings
mentioned

until the future order of the said court; and whereas it is provided, by the order of the said Judge
 awarding the said injunction, that the plaintiff shall not have the benefit thereof until Said Hale
Jarvis, or some one for them, shall enter into a bond, with good security, in
 the clerk's office of the said court, payable to the Commonwealth of Virginia, in the penalty of
Three hundred Dollars, and conditioned to pay all such costs as may
 be awarded against the said plaintiff, and all such damages as shall be incurred in case the said
 injunction be dissolved. Now, therefore, if the said Hale and Jarvis
 shall pay all such costs as may be awarded against them, and all such damages as shall
 be incurred in case the said injunction be dissolved, then this obligation to be void, or else to re-
 main in full force and virtue.

Executed in the presence of

E. W. R. Ewing [SEAL.]
S. V. F. Richmond [SEAL.]
 [SEAL.]

In the Clerk's Office of the Circuit Court of the County of Lee.

This day personally appeared before me A. B. MUNSEY, Clerk of the Circuit Court of
 the County of Lee, S. V. F. Richmond & E. W. R. Ewing
 and made oath that their estates, after the payment of all their just
 debts, and those for which they bound as security for others, and expect to have to pay
 worth the sum of Three hundred dollars,
 over and above all exemptions allowed by law.

Given under my hand this 18th day of January 1894.

A copy Teste A. B. Munsey Clerk.
A. B. Munsey clerk

Hale & Jarvis

to

}

INJUNCTION
BOND.

Commonwealth.

Filed January the 18th 1894
JTB Munsey Clerk

1 Virginia: - In the Circuit Court of Lee
2 County. At 1st February Rules, 1894.

3 C. F. Y. Carter, James M. Moore and
4 John B. Wygal, Justices of the Peace. Defts
5 A vs } In Chancery
6 George D. Hale Esq. } self.

7 The plea in abatement of
8 C. F. Y. Carter and James M. Moore, two of the
9 defendants to the bill of injunction
10 exhibited against them and John B. Wygal,
11 Justice of the Peace in this Court by George D. Hale Esq.

12 These defendants, for plea to the said bill
13 of Injunction say that the plaintiff has
14 not given or executed bond as is required
15 by the order of this Court endorsed on the
16 complainant's bill of Injunction; that
17 the bond on file in this cause appears
18 on its face to be a bond given in a case
19 wherein A. V. F. Richmond and C. W. R. Ewing
20 have obtained an Injunction against C. F.
21 Y. Carter and James M. Moore, and does
22 not appear, as it should do, to be a bond
23 in an Injunction case of George D. Hale
24 Esq against C. F. Y. Carter and James M.
25 Moore.

26 And for this also that the bond on
27 file in this case appears on its face to
28 be a bond given in an Injunction
29 case wherein "George D. Hale and H. C.
30 Jarvis" have obtained an Injunction
31 against C. F. Y. Carter and James M. Moore,
32 and does not appear on its face to be, so

27

1 it should do, a bond in the case of "George
2 D. Hale & Co" against C. F. J. Carter and James
3 M. Moore.

4 And for this also that the bond on
5 file in this case does not appear on
6 its face, as it should, to be made
7 payable to C. F. J. Carter and James M. Moore,
8 pursuant to Sec. 181, Code 1887, Va.

9 And for this also that the writ now
10 on file in this case, and executed on
11 these defendants, is not ^{issued in a suit} a writ of George
12 D. Hale & Co, nor is it ^{issued in a suit} a writ of any
13 other person or persons against these
14 defendants.

15 And for this also that the writ on
16 file in this case is one ^{issued} out
17 against C. F. J. Carter, James M. Moore
18 and John B. Wygal, and is not a
19 writ ^{issued} out, as it should be,
20 against C. F. J. Carter, James M. Moore
21 and John B. Wygal, "Justice"

22 And for this also that the clerk who
23 issued the summons did not endorse upon
24 it either that a bond was or was not
25 given as is required by Sec. 3442,
26 Code 1887, Va.

27 Whereupon these defendants plead to said
28 bill and to said bill of injunction
29 and to the jurisdiction of this Court,
30 and pray the judgment of the Court whether
31 they should be compelled to make any further
32 or other answer to the said bill of

(no 17)
L. F. J. Carter et al

2001 } 2002 in 2003
L. Carter

George D. Hale & Co

Filed Feb 5th, 1884.
Cat. 1st Feb Rules)
A. B. Munsey Clerk

No 1

Final Court Order in case of

327

Wm A. Orr Atty.

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In the Circuit Court of Lee County, Va
At 2nd Feb'y Rules, 1894.

1 F. J. Carter, and James M. Moore and John
2 B. Wygal, Justice &c. Defts
3 vs } In Chancery
4 George D. Hale &c. Plffs

5 The separate plea in Answer of F. J. Carter and James M. Moore to a bill of
6 Injunction exhibited against them and
7 John B. Wygal, Justice &c, in the Circuit Court
8 for the County of Lee by George D. Hale &c.

9 The said defendants by protestation, not
10 confessing or acknowledging all or any of the
11 matters and things in the said bill of Com-
12 plaint contained to be true in manner
13 and form as the same are therein set forth,
14 for plea, nevertheless, to said bill, doth
15 plead and aver —

16 That the said Com-
17 plainant instituted suit against these
18 defendants and John B. Wygal, Justice, on
19 the 18th day of January, 1894, and made
20 the spe. in Chancery returnable to 1st
21 February Rules, 1894, which spe. in Chan-
22 cery was duly executed on these defend-
23 ants —

24 That the said Complainant filed his
25 bill against these defendants at 1st February
26 Rules, 1894, in the Circuit Court Clerk's Office of Lee Co.

27 That these defendants appeared at
28 the 1st February Rules, 1894, in the Clerk's
29 Office of the Circuit Court of Lee Co, and
30 pleaded to said writ and bill of Injunction —

31 That the said Complainant, on the
32

1 ~~on~~ the 7th day of February, 1894, issued an-
2 other writ for the same thing and in the
3 same case, against the same defendants,
4 and for the same cause of action,
5 and made said writ returnable to 2nd
6 February Rules, 1894.

5- 7 That at ^{the} 2nd February
8 Rules, 1894, the complainant filed the
9 same bill of Injunction that the said
10 complainant filed against these de-
11 fendants at the 1st Feby Rules, 1894.

6- 12 That the plea in Abatement
13 filed by these defendants to the action of the
14 complainants at the 1st Feby Rules held
15 in the Clerk's Office of the Circuit Court
16 of Lu. Co. Va had not-yet-been
17 passed upon by said Court; and
18 said plea had in no wise been abandoned
19 prior to the 2nd February Rules, 1894,
20 (nor at the time of the issuing of the writ on the 7th day of Feby, 1894,
of said Court.)

7- 21 That the Injunction bond
22 filed in this case on the 7th day of February
23 1894 provides as follows: "Now, therefore,
24 if the said George D. Hale & H. C. Jarvis
25 shall pay all such costs as may be aw-
26 arded against them, and all such damages
27 as shall be incurred in case the said
28 injunction be dissolved."

8- 29 That the Injunction
30 bond filed in this case dated Feby 7th
31 1894 should provide as follows instead
32 as it does and as it is changed in

Go that the applicant to the Bill does not appear to be one in a case of Geo. D. Hale vs against -
H. F. T. Carter and James M. Moore, but it is an Applicant in a case of Geo. D. Hale and H. Co.,
James vs said Carter & Moore - therefore the Bill here is not sworn to & the injunction
should be dissolved

1 the foregoing counts, to-wit: -
2 "Now, therefore, if the said George D.
3 Hale & Co." shall pay all such costs as
4 may be awarded against them,
5 and all such damages as shall
6 be incurred in case the said
7 injunction be dissolved" and that
8 said bond is not good and sufficient
9 in Law. — X

10 Whereupon these Defendants plead
11 to said bill of Injunction and to the writ
12 of July 7th 1894, and pray the Judgment of
13 the Court - whether they should be compelled
14 to make any further or other answer to
15 the said bill of Injunction, and pray
16 to be hence dismissed with their reasonable
17 costs and Charges in this behalf most
18 strongly sustained.

19 Wm A. Opp, Attor for
20 Defs.

21 Virginia: -

22 In the Clerk's office of the Circuit Court of Lee County.

23 J. A. B. Munsey, Clerk of the said Court, do certify that
24 C. F. T. Carter. - this day appeared before me in
25 my office and made oath that the foregoing plea
26 in Abatement is true to the best of knowledge,
27 information and belief. This Feb'y 8th 1894.

28 J. A. B. Munsey Clerk
29
30
31
32

100

Plea in Abatement No. 2

L. F. J. Carter et al
vs

Geo. D. Hale & Co

Filed Feb'y the 19th 1894
A. B. Munsey clerk

No 2

Writ of Habeas Corpus

In Chancery.

Know all Men by these Presents, That we S. V. F. Richmond and
E. M. R. Ewing
 are held and firmly bound unto the Commonwealth of Virginia, in the sum of Three
hundred dollars, to the payment whereof, well and truly to be made to
 the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs,
 executors, and administrators, jointly and severally, firmly by these presents. And we hereby
 waive the benefit of our homestead exemptions as to this obligation, and any claim, right, or
 privilege to discharge any liability arising under this bond in any currency, funds, counter claims
 or offsets other than legal-tender currency of the United States. Sealed with our seals, and
 dated this 7th day of February one thousand eight hun-
 dred and ninety four.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas ~~the above bound~~
George D. Hale and H. C. Jarvis late merchants trading
under the firm name & style of George D. Hale & Company
 on a bill in Chancery against C. F. T. Carter James M. Moore
and John B. Mygal ("Justice")

addressed to the Judge of the Circuit Court of the County of Lee, has obtained from the said
 Judge an injunction to injoin and restrain the debts C. F. T. Carter & James M. Moore
their agents or attorneys from further proceeding upon
the judgment in the bill and proceedings mentioned &c.

until the future order of the said court; and whereas it is provided, by the order of the said Judge
 awarding the said injunction, that the plaintiff shall not have the benefit thereof until they
, or some one for them, shall enter into a bond, with good security, in
 the clerk's office of the said court, payable to the Commonwealth of Virginia, in the penalty of
Three Hundred Dollars, and conditioned to pay all such costs as may
 be awarded against the said plaintiff, and all such damages as shall be incurred in case the said
 injunction be dissolved. Now, therefore, if the said George D. Hale & H. C. Jarvis
 shall pay all such costs as may be awarded against them, and all such damages as shall
 be incurred in case the said injunction be dissolved, then this obligation to be void, or else to re-
 main in full force and virtue.

Executed in the presence of

S. V. F. Richmond [SEAL.]
E. M. R. Ewing [SEAL.]
 [SEAL.]

In the Clerk's Office of the Circuit Court of the County of Lee.

This day personally appeared before me A. B. MUNSEY, Clerk of the Circuit Court of
 the County of Lee, S. V. F. Richmond and E. M. R. Ewing
 and made oath that their estates, after the payment of all their just
 debts, and those for which they bound as security for others, and expect to have to pay
is worth the sum of Three hundred dollars,
 over and above all exemptions allowed by law.

Given under my hand this 7th day of February 1894

A copy

A. B. Munsey

Clerk.

Teste A. B. Munsey Clerk

*Notice to Quash
This bond, p. 5. A.*

George D. Hale & Co

to { **INJUNCTION
BOND.**

Commonwealth.

*Filed Feb'y the 7th 1894
A. B. Munsey
Clerk*

No 2

Virginia: In the Circuit Court of Lee County

George D. Hale & Co

vs

In Chancery

C. F. T. Carter & J. M. Moore

The defendants by their
attorney agree that the deposition of George D. Hale
and V. C. Hillman will not be objected to on the
ground that they were taken and endorsed
filed before the date of the writ in this
suit said writ bearing date to day.
This March 26th 1894.

C. F. T. Carter

J. M. Moore By

Wm A. Orr, Atty.

Carte & Moore

ad2 } Agreement

Geo. J. Hale & Co

Filed March the 27th 1894
A. B. Munsey
Clerk

C. F. T. Cartwright ab }
aaz } Brief

Geo. D. Hall & Co

In the Circuit Court of Lee County, Va June 7. 1894.
To the Hon. W. L. Miller, Judge of said Court:

At the time of the suing out of the
warrant before the Justice of the Peace, that
tribunal in Virginia, had jurisdiction
of a claim for damages for breach of any
contract to the amount of \$100⁰⁰, see Acts
of General Assembly of Va for 1891-2, page
975-6-

The deposition of E. W. R. Cwing is
exempted to and should be suppressed
for the reasons endorsed thereon-

The Appeal was not granted in
time & the action of the County Court
was proper - High on Injunction p/35.
S. 176

Further, the defendants have
clearly proved their case and
made it out on the merits of
Cause & should recover \$100-
& the Costs recovered before the J. P.
& the Costs of this suit.

There is no bond in the case - there
is therefore no injunction.

Wm. A. Orr, Atty.

Brief of
to F. J. Carter at at

addg Chy (an Co)

Geo. D. Hale & Co

Wm A. Orin, atty

Complainant's Brief.

facts This cause originated from a proceeding before a J.P. The facts as alleged in the bill and and borne out by the proof, are about as follows:

The complainants, Geo. D. Hale & Co., are merchants and hardware dealers of Rogersville, Tenn. C. F. T. Carter and Jas. M. Moore of Lee county, Virginia, negotiated with said Company for a certain plainer. The trade was concluded and the defendants executed to the complainants their several notes aggregating \$70.50, in payment for the said machine. These notes having been long past due a warrant was issued thereon by a Justice. The trial Justice gave judgment against these complainants and in favor the defendants for \$100.00. This judgment, it was thought, and is submitted, was null and void, because the Justice exceeded his jurisdiction, having offsetted the acknowledged notes of \$70.50 and given judgment for \$100.00, he took jurisdiction of \$170.50, which made his action of no effect.

Mayo's New Guide, P. 40, 1 Black on Judg.
sec. 240; 9 Gratt., 40.

The complainants lost their remedy at law, which was an appeal to the County court, by reason of the trial justice leaving the county. (See depo. of E. W. R. Ewing.)

The plaintiff's rights in this Honorable court and all questions arising as the irregularity of the action of the county court and the finality of the judgment of the Justice, &c., &c., &c., have been settled by an over ruled demurrer. (See demurrer and complainants' brief marked "On demurrer".) Now the only question that is left for the court to settle is on the merits, i. e., should complainants have a decree for the \$70.50 purchase price for the plainer.

There are two questions of dispute at this point:

1. It is admitted that the said plainer was a second hand machine, and the price was much less than for a new machine. It needed some repairs. The Defendants contend that plaintiffs, Geo. D. Hale & Co., were to furnish these repairs, which is denied by Hale & Co.

2.If Hale & Co. were to furnish repairs,they, defendants, says they being house builders,were damaged by reason of the failure of Hale and Co. to furnish such repairs.

As to the second point first.

The damages here asked are too remote. It no where appears in this case that Geo.D.Hale & Co. ever knew that Moore and Carter were house builders, and a fortiori, that they knew that said Carter and Moore had a house under contract at the time of the purchase of the amchine, with reference to the building of which they could be supposed to have made the agreement to furnish the repairs. Hence were it even true that Hale & Co. were to furnish repairs at all, no liability would attach by reason the failure of the said Carter and Moore to build the said house, as it is not claimed that the repairs were to have been furnished with a view to such work. On p. 4287 of, sec. 2619 of Lawson R., Rem. & Prac., it is said "in an action for the breach of an agreement" to put a harvester in first class order, to enable the owner to cut and bind his grain therewith, "damages by reason of the loss of crop from not having the machine in condition to cut and save are too remote."

In 2 Amer. E. Enc. we are told on page 910 that the party injured must not remain supine, but must take such steps to reduce his loss as lie in his power. No where do the defendants claim that they did any thing to reduce this loss. They did not even call upon Hale & Co. to furnish repairs, but let the matter rest until the day of trial. They have according to their own showing, been guilty of contributory negligence.

But of the 1st ^{point} ₁.

Was the contract such as the defendants claim?

Geo.D.Hale of the firm of Geo.D.Hale and Co. says there was no such contract. But that the repairs need^{ed} ~~it~~ was agreed could be furnished by a blacksmith at a small cost. John Armstrong who it is shown is disinterested, it precisely to the same effect. (See depo. of both.)

That Carter and Moore were not expecting Hale and Co. to furnish any repairs is clearly shown by the fact that Carter writing for the firm as he says on p.15 of his deposition, ordered repairs for this very machine, which were shipped to Pennington Gap, and never taken from the depot. He denies ordering these repairs for this machine, but says that they were for one which he expected to buy! He mentions one which he says that he talked of buying, but the owners and those having possession say that he never said a word to them in reference to such trade. (See depo. Y & Z.) Then falsum in uno falsum in omnibus!

For these and many other reasons it is respectfully submitted that the complainants should have a decree for the \$70.50 with interest and for the costs of this bill.

E. M. R. Ewing,
For Com. Plt.

Geo. D. Hale & Co.

vs. } Brief.

W. H. J. Leitch, et al.

Complainants

Brief on Merits.

Filed Oct. 13, 1884.

Ewing.

On Demurrer. See another brief.

The first question which is to be settled in this case is that of the demurrer. We respectfully submit that the demurrer is groundless for the following reasons:

1. The demurrer assigns as its first ground that if there is any cause of action the same is determinable at law by a court of competent jurisdiction.

It is respectfully submitted that this assignment is not well taken, because:

Ordinarily this cause was determinable in a court of law, but the complainants allege that there are facts in this case of which they could not avail themselves at law, and were prevented from so doing, either through fraud or accident, unmixed with fraud or negligence on their part or that of their agents. If this be true, then this court of equity has jurisdiction, if it be not true, this court cannot determine on demurrer, but only on a trial of the issue.

60 Amer. Dec. 732, 1 Black on Judgments, sec. 366.

2. We submit that the second ground of the demurrer is amply refuted by the authorities above cited. It is not necessary, we submit to allege fraud. The bill alleges that the complainants were prevented from taking an appeal from the judgment of the trial Justice by reason of his leaving the state, a fact wholly beyond their control, and with which they had nothing to do. To show that they were not winking at this absence, they appealed to another justice and prayed an appeal on the last day of the ten allowed by the law: and they further allege in their bill that they were prevented from taking advantage of the facts available at law by the judgment of the county court in dismissing the said appeal as improperly granted. Now it is submitted that these complainants had a remedy somewhere if they were wronged, and as to what it was, or whether they used the proper means and that with due care is not to be settled by this demurrer.

3. The third ground of demurrer is that the county court was court of final jurisdiction, if so, then we had, as we claim, no appeal, its decision was the final decision of the matters submitted to it, at law, but

if as the law writers put it, it was against conscience to execute its judgment, then a court of equity has jurisdiction, and will investigate the whole proceeding and restore any wrong done without negligence or fraud on the part of the injured party. Had the complainants been able to have availed themselves of all legal defences at law, no ground would lie in this Honorable court of equity. But they allege that there were facts of which they might have availed themselves at law, but were prevented from so doing, at least by accident, and that without fraud or negligence on their part or that of their agents. In the section just quoted from Mr. Black, after quoting several authorities, and citing a large number of others, tells us that to the same effect are all the authorities.

4. The fourth ground of the demurrer contends that because the county court refused to try, there was an appeal to the circuit court.

We cannot see how this affects the situation. Acts of 1887-88, p. 17, sec. 3455 Code 1887 amended thereby, touching cases heard in the county court, which were brought in a Justice's court, reads: "No petition shall be presented for an appeal from any judgment of a county or corporation court which is rendered on an appeal from a judgment of a justice, except in cases where it is otherwise expressly provided." It is readily admitted that the case under investigation is not one where "it is otherwise expressly provided".

In 28 Grat. 787, it is decided that "Where a warrant is brought before a justice upon a claim exceeding \$20, and upon the application of the defendant before trial, it is removed to the county court, an appeal lies to the circuit court, from the judgment of the county in the case". That the case under investigation is not a removal is indisputable, the justice having rendered judgment. Then the question is, Did the county court pronounce a judgment? If a judgment was pronounced, was it in the same case tried by the justice? If a judgment was pronounced by the county court, that it was in the same case tried, ⁱⁿ and not removed from, a justice's court, will be readily admitted.

1 Black on Judgments, sec. 1, p. 2, tells us that a "judgment is the determination or sentence of the law, pronounced by a competent judge or court, as a result of an action or proceeding instituted in such court,

affirming that upon matters submitted for its decision, a legal duty or liability does or does not exist." And what seems to us to be a clearer definition for this case, is that given by the court in White-
well vs. Emory, 59 Amer. Dec. 220, quoted in foot note by the same writer, and with his full approval, to wit: "A judgment is the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it." And a yet more clear definition for our purpose is that given by 7 Lawson Right. Rem. Prac., sec. 3408, "A judgment is defined as the decision or sentence of the law pronounced by a court or other competent tribunal upon the matters contained in the record". The county court had the warrant and its endorsement as the record in the case before it: and upon this record the county court came to a conclusion made a decision, and entered that decision in the proceeding of the term, as its judgment in the case: - the only disposition that could have been made according to law. Upon this decision of the county court, as it will be seen by an inspection of the record, an execution was duly issued and was accordingly executed for the costs in that court expended, thus showing the validity of that judgment. Hence, according to the section of Acts above cited, no appeal lay to the circuit, a fortiori, to any other court. Therefore there being facts of which the parties could not avail themselves at law by reason of the action of the trial justice, his action being beyond their control and without their consent, the only remedy was this Honorable court of equity.

In the last place it is respectfully submitted that the demurrer should be over ruled because the bill alleges that the judgment of the justice is null and void, and if not null and void, is voidable, if this be true, any action of the county court or that of any other court of law, cannot affect the rights of the complainants in a court of equity.

We submit that the case ought to be heard the truth of the several allegation of the bill ascertained.

and
1
E. W. R. [unclear] for
Complainants.

(2)

Geo. D. Hale, et al.

vs. } On demurrer.

C. F. J. Carter, et al.

Brief of Com-
plainants.

E. W. R. Ewing
For Complainants

Wm. A. Orr
For Defs.

Lo. F. T. Carter et al

vs

Geo. D. Hale & Co

} In Chy - Brief at
Nov. Term 1894.

To the Hon. W. T. Miller, Judge of the Circuit
Court of Lee County, Va.

The bill should be dismissed upon the following
grounds: 1st The Plffs have failed to
show that the Judgt rendered by the J. P. was
procured by surprise, fraud or otherwise
illegally. 2nd Because the Plffs do not
show that they used due diligence in
perfecting an appeal to the County Court.
3rd Because the appeal was not granted
by the trial Justice as the law requires.
4th Because the evidence in this case
shows that the Defendants are entitled
to a decr for the same amount
for which they obtained Judgt before
the J. P. and the costs of this suit.

Geo. Ely & Son

It is submitted that the demurer
settles 1, 2 & 3 reasons assigned
above.

J. W. R. Ewing
for Compt.

C. F. Martin et al

advs Brief

Mrs. D. Hale & Co

Filed in case Oct-

12th- 1874.

Wm A. Orr Es

To C.F.T. Carter and James M. Moore, and John B. Wygal, (Justice):

You are hereby notified that on the 27th day of February, 1894, at the office of the Stillman-Riche Machine Co, in the town of *Nestorly*, state of R.I., between the hours of 8 in the morning and 4 in the evening, of that day, ~~we~~ shall proceed to take the depositions of T.V. and V.C. Stillam, and others to be read as evidence in ~~our~~ behalf in a certain action in equity now pending in the Circuit court of Lee county, wherein we are complainants and you are defendants: and if from any cause the taking of the same be not begun, or be begun and not completed on that day, the taking thereof will be adjourned from day to day and from place to place, and between the same hours, until the same shall be completed.

Very truly

*Geo. D. Hale &
H. Le. Jarvis,*

By
E. W. R. Ewing,
Attorney,

Gen. D. Hale, et al.

B. } Notice to dep.

Car. F. J. Carter, et al.

I hereby accept
legal service of the
within notice, waiv-
ing all objections to
time - This Feb. 22, 84.

Wm. A. Opp, Atty
for Defts —

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *C. F. T. Carter and James M. Moore*
and John B. Mygall ("Justice")

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said
Court on the *3rd* Monday in *February*, 1894, to answer a bill in Chancery,
exhibited against *Them* in our said court by *George D. Hale & Co*
Jarvis late merchants trading under the firm name & style
of Geo D Hale & Co

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,
the *7th* day of *February* 1894, and in the 11 *8th* year of
the Commonwealth.

A. B. Munsey Clerk.

George D. Hale & Co

vs.

SUBPÆNA
IN CHANCERY.

to F. T. Carter et al

E. W. R. Ewing p. q.

To 2nd February Rules 1894

Circuit Court.

I accept legal service
of the within for a
day. Feby 7th 1894
Wm A. Orr atty.
for Defts.

The bond required has
been given
A. B. Munsay clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*L. F. Carter, James M. Moore and
John B. Wygab (Justices.)*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *1st* Monday in *April*, 189*4*, to answer a bill in Chancery, exhibited against *them* in our said court by *George D. Hale and*

H. C. Jarvis, late merchants trading under the firm name and style of Geo. D. Hale & Co.

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *26th* day of *March* 189*4*, and in the *118* year of the Commonwealth.

A. B. Munsey Clerk.

Jos. D. Hale & Co

US. { SUBPENA
IN CHANCERY.

C. F. Carter et al

E. W. R. Ewing p. q.

To 1st Apr, 1894 Rules,

Circuit Court.

I have accept legal
service of the within
writ. Mich 26-1894.

C. F. Carter
Jas M. Moore
By Wm A. Orr atty